

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****[FEMA-1318-DR]****Virginia; Amendment No. 1 to Notice of
a Major Disaster Declaration****AGENCY:** Federal Emergency
Management Agency (FEMA).**ACTION:** Notice.**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA-1318-DR), dated February 28, 2000, and related determinations.**EFFECTIVE DATE:** March 7, 2000.**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3772.**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

Newport News City for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 00-6212 Filed 3-13-00; 8:45 am]

BILLING CODE 6718-02-P**FEDERAL LABOR RELATIONS
AUTHORITY****[FLRA Docket No. 0-NG-2353]****Notice of Opportunity To Submit Amici
Curiae Briefs in a Negotiability
Proceeding Pending Before the
Federal Labor Relations Authority****AGENCY:** Federal Labor Relations
Authority.**ACTION:** Notice of the opportunity to file briefs as amici curiae in a proceeding

before the Federal Labor Relations Authority in which the Authority has been asked to reconsider how management's statutory rights to direct employees and to assign work should be interpreted in relation to proposals that establish the number of performance rating levels for individual job elements and summary ratings.

SUMMARY: The Federal Labor Relations Authority is providing an opportunity for all interested parties to file briefs as amici curiae on significant issues arising in a case pending before the Authority. The Authority is considering the case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101-7135 (the Statute) and its regulations set forth at 5 CFR part 2424. The issue concerns how management's rights to direct employees and assign work under section 7106(a)(2)(A) and (B) of the Statute should be interpreted in relation to proposals that establish the number of performance rating levels for individual job elements and summary ratings.**DATES:** Briefs submitted in response to this notice will be considered if received by mail or by personal or commercial delivery in the Authority's Office of Case Control by 5 p.m. on April 13, 2000. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.**FORMAT:** All briefs shall be captioned "*National Association of Government Employees, Local R3-10 and U.S. Department of Transportation, Federal Aviation Administration, Washington, D.C., Case No. NG-2353.*" Briefs must contain separate, numbered topic headings corresponding to the four questions at the end of this notice. Parties must submit an original and four copies of each amicus brief, on 8½ by 11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27(a) and (c). The designated representatives are:George L. Reaves, Jr., Union Representative, National Association of Government Employees, 36 Wine Street, Hampton, VA 23669;
Ron Frampton, Agency Representative, Federal Aviation Administration, 800 Independence Ave., SW, AHR-12, Washington, DC 20591.**ADDRESSES:** Mail or deliver briefs to Peter Constantine, Director, Case

Control Office, Federal Labor Relations Authority, 607 14th Street, NW, Room 415, Washington, DC 20424-0001.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, (202) 482-6540.**SUPPLEMENTARY INFORMATION:** The case presenting the issues on which amicus briefs are being solicited is before the Authority on a petition for review of negotiability issues filed by the National Association of Government Employees, Local R3-10 (NAGE/Union) under section 7105(a)(2)(E) of the Statute. The Union requests that the Authority reconsider its precedent that proposals that establish the number of rating levels for individual performance elements and for summary performance ratings violate management's rights to direct employees and assign work under section 7106(a)(2)(A) and (B) of the Statute and are outside the duty to bargain. To assist interested persons in responding, the Authority offers the following background on the case, summary of the relevant precedent, and questions on which amicus views are being sought.**A. Background**

The negotiability dispute in this case arose in the context of the parties' negotiations for an initial collective bargaining agreement that would cover a unit of the Federal Aviation Administration's (FAA/Agency's) Air Traffic Assistants. The Agency and the Union executed a Memorandum of Understanding (MOU) which served as an interim supplement to FAA Order 3500.7 regarding its Performance Management System.

The Agency established a new Performance Planning and Recognition System that recognized two rating levels of performance for individual job elements and summary ratings. In response, the Union submitted two proposals that specified three rating levels for individual job elements and summary ratings consistent with the former system and the parties' MOU. The Union filed a petition for review of negotiability issues with the Authority after the Agency declared these proposals nonnegotiable.

During the parties' negotiations, Congress enacted two pieces of legislation that are relevant to the Agency's personnel management activities. First, in November 1995, Congress enacted the Department of Transportation and Related Agencies Appropriation Act of 1996, Pub. L. No. 104-50, Title III, section 347, 109 Stat. 460 (1995), as amended by Pub. L. 104-

122, 110 Stat. 876 (1996) (codified at 49 U.S.C. 106 note) (Transportation Act) which gave the FAA Administrator broad discretion to institute a new personnel management system for the FAA. Section 347(a) of the Transportation Act provides that—

notwithstanding the provisions of title 5, United States Code, and other Federal personnel laws, the Administrator of the [FAA] shall develop and implement * * * a personnel management system for the [FAA].
* * *

Section 347(b), as amended, made the Statute applicable to the new personnel management system instituted by the FAA, providing, in pertinent part, that—

[t]he provisions of title 5, United States Code, shall not apply to the new personnel management system developed and implemented pursuant to subsection (a), with the exception of * * * (3) chapter 71, relating to labor-management relations.

Second, in early October 1996, Congress enacted the Air Traffic Management System Performance Improvement Act of 1996, Pub. L. No. 104-264, Title II, 110 Stat. 3213 (1996) (Improvement Act) at about the time the Union filed its petition for review with the Authority. Section 253 of the Improvement Act amended 49 U.S.C. Chapter 401 by adding section 40122. New section 40122(a) addresses the FAA's bargaining responsibilities with respect to "developments" or "changes" to the new personnel management system. Section 40122(a) provides in pertinent part—

(1) CONSULTATION AND NEGOTIATION. In developing and making changes to the personnel management system initially implemented by the Administrator of the [FAA] on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the [FAA] certified under section 7111 of title 5 and consult with other employees of the [FAA].

B. Summary of Selected Cases

The parties' submissions in the case before the Authority reference and rely on a number of Authority decisions. Some of these decisions are summarized below. This is not intended as a complete description of Authority precedent in this area, and amici are encouraged to address any precedent deemed applicable.

In *National Treasury Employees Union and Department of the Treasury, Bureau of the Public Debt*, 3 FLRA 769 (1980) (*BPD*), *aff'd sub nom. NTEU v. FLRA*, 691 F.2d 553 (D.C. Cir. 1982) (*NTEU I*), the Authority held that management's rights to assign work and direct employees encompassed the identification of critical elements and

the establishment of job requirements in performance standards for such elements. The Authority reasoned, in line with the then relevant Office of Personnel Management (OPM) regulations, that the establishment of critical elements and performance standards are "among the ways in which management supervises and determines the quality, quantity, and timeliness of work required of employees." *Id.* at 776.

In affirming *BPD*, the D.C. Circuit ruled that "the right to determine what work will be done, and by whom and when it will be done, is at the very core of successful management of the * * * public service operations of a federal agency[.]" and that this right is crucial to management achieving optimum productivity and effectiveness. *NTEU I*, 691 F.2d at 563.

In *NTEU and U.S. Nuclear Regulatory Commission*, 13 FLRA 325 (1983) (*NRC*), the Authority held that the right to assign work and to direct employees included the right to identify non-critical elements and to establish performance standards for all rating levels, which "management will use to encourage and reward successful performance as well as to discourage performance which is unacceptable." *Id.* at 328.

Relying on *BPD*, *NRC* and *NTEU I*, the Authority, in *AFSCME, Council 26 and U.S. Department of Justice*, 13 FLRA 578 (1984) (*DOJ*), found that the number of performance levels for individual job elements and summary ratings were "essential aspects" of management's rights to assign work and to direct employees. *Id.* at 580. In doing so, the Authority relied upon the relationship of the number of levels to the setting of performance standards and to the establishment of rewards and sanctions for performance, which have been viewed as related to the identified management rights. The Authority noted that "[i]n short, the number of such levels is integrally related to the effectiveness of an agency's using performance standards to accomplish the work of the agency in a manner consistent with the exigencies of effective government." *Id.* at 581.

Relying on *DOJ*'s analytical framework, in *National Treasury Employees Union and Internal Revenue Service*, 14 FLRA 463 (1984) (*IRS*) (proposal 5)(Member Haughton dissenting), *vacated sub nom. NTEU v. FLRA*, 793 F.2d 371 (D.C. Cir. 1986) (*NTEU II*), the Authority held that management's rights to assign work and direct employees involve establishing rewards and sanctions for employee performance, including the use of

incentives for superior performance to "accomplish [the agency's] work in a manner consistent with the exigencies of effective government." *IRS*, 14 FLRA at 470.

The D.C. Circuit in *NTEU II* overruled the Authority, and held that the level of incentive pay for "work that has been "assigned" or "directed" does not come within the nonbargainable management rights to assign work and direct employees." *NTEU II*, 793 F.2d at 375. The court ruled that the terms "assign work" and "direct employees" represent precise, defined management activity and were not meant to be so expansive as to include whatever is useful for getting the agency's work done. The court concluded that the Authority's reasoning, that incentive pay affected management's rights since incentives affected the priorities for accomplishing the agency's work, demonstrated a familiar defect in statutory construction of improperly substituting the ends for the means. Then Judge Scalia suggested that if this approach were allowed, it would be difficult to imagine any proposal concerning terms and conditions of work that would remain within the duty to bargain. *See id.* at 374-75.

In *National Treasury Employees Union and Internal Revenue Service*, 27 FLRA 132 (1987), the Authority adopted the court's holding in *NTEU II*, that management rights do not encompass the right to determine rewards for performance, and has consistently applied it to proposals concerning incentive awards. *See, e.g., National Association of Government Employees, Local R1-144, Federal Union of Scientists and Engineers and U.S. Department of the Navy, Naval Underwater Systems Center, Newport, Rhode Island*, 38 FLRA 456 (1990) (*U.S. Navy*) *decision on remand as to other matters*, 43 FLRA 47 (1991). However, the Authority has not discussed or applied the court's rationale in *NTEU II* in cases involving the number of performance rating levels.

A. Questions on Which Briefs Are Solicited

The Authority directed the parties in the instant case to file briefs addressing the following questions:

1. Notwithstanding current precedent, does the specification of the number of performance rating levels affect management's rights to direct employees and assign work? If so, how and why? If not, how is the analysis of *DOJ* incorrect?

2. In *NTEU II*, the D.C. Circuit rejected the Authority's determination in *IRS* that proposals establishing a system of

rewards and sanctions for employee performance affected management's rights to direct employees and assign work under section 7106(a)(2)(A) and (B) of the Statute. What application, if any, does the court's rejection of this determination have on whether the specification of the number of rating levels affects management's rights to direct employees and assign work?

3. In 1995, OPM deregulated performance management to give agencies greater flexibility. Is OPM's deregulation of performance management relevant to the determination of whether the specification of the number of rating levels affects management's rights to direct employees and assign work?

4. Under section 347(b) of the Transportation Act, the FAA's personnel management system is exempted from substantially all of title 5 of the U.S.C. and implementing regulations. Does this exemption prevent the Authority from addressing in this case the general question of whether the specification of the number of rating levels for individual performance elements and for summary performance ratings affects management's rights to direct employees and assign work under sections 7106(a)(2)(A) and (B) of the Statute?

As this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these issues and any other relevant issues that amici want to address.

Dated: March 9, 2000.

For the Authority.

Peter Constantine,

Director of Case Control.

[FR Doc. 00-6211 Filed 3-13-00; 8:45 am]

BILLING CODE 6727-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices

also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Angela Tinervia, Shelby Township, Michigan; to acquire voting shares of New Century Bancorp, Inc., Southfield, Michigan, and thereby indirectly acquire voting shares of New Century Bank, Southfield, Michigan.

Board of Governors of the Federal Reserve System, March 8, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00-6138 Filed 3-13-00; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Charles Schwab Corporation, Wilmington, Delaware; to become a bank holding company by acquiring U.S. Trust Corporation, New York, New York, and U.S.T.L.P.O. Corp., Wilmington, Delaware (a bank holding company with respect to U.S.T. Company of Texas, National Association, Dallas, Texas), and thereby indirectly acquire United States Trust Company of New York, New York, New York; U.S. Trust Company National Association, Los Angeles, California; U.S. Trust Company, Greenwich, Connecticut; U.S. Trust Company of New Jersey, Princeton, New Jersey; and U.S. Trust Company of Texas, National Association, Dallas, Texas.

In connection with this application, Applicant also has applied to acquire U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y; U.S. Trust Company of Delaware, Wilmington, Delaware, and U.S. Trust Company of North Carolina, Greensboro, North Carolina, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y; and NCT Opportunities, Inc., Greensboro, North Carolina, and CTC Consulting, Inc., Portland, Oregon, and thereby engage in providing financial and investment advice, pursuant to § 225.28(b)(6) of Regulation Y.

In addition to the application, Applicant also has applied to retain voting shares of U.S. Trust Company of North Carolina, Greensboro, North Carolina, upon the nondepository trust company becoming a bank as defined by the Bank Holding Company Act, by accepting FDIC insured deposits and NCT Holdings, Inc., Greensboro, North Carolina, on becoming an intermediate bank holding company with respect to U.S. Trust Company of North Carolina. Applicant also has an option, subject to the terms of the stock option agreement, to exercise its option to purchase up to 19.9 percent of the outstanding common shares of U.S. Trust Corporation, New York, New York.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Anderson Bancshares, Inc., Hemingway, South Carolina; to merge with Anderson Brothers Bancshares,