

**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 proceedingbefore 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, CaseControl 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**

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## 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**

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## 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/](http://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,