UNITED STATES OF AMERICA

**FEDERAL LABOR RELATIONS AUTHORITY**

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: August 1, 2002

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
METROPOLITAN CORRECTIONAL CENTER
CHICAGO, ILLINOIS

Respondent

and Case No. CH-CA-01-0127

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3652, AFL-CIO

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA

**FEDERAL LABOR RELATIONS AUTHORITY**

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| and<br><br>AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3652, AFL-CIO<br><br>Charging Party | Case No. CH-CA-01-0127 |

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **SEPTEMBER 3, 2002**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

RICHARD A. PEARSON
Administrative Law Judge

Dated: August 1, 2002
Washington, DC

OALJ 02-53

# FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

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| and<br><br>AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3652, AFL-CIO<br><br>Charging Party | Case No. CH-CA-01-0127 |

Greg A. Weddle, Esquire
For the General Counsel

Bryan Witt, Esquire
Cassandra Loggins-Mitchell, Human Resources Manager
For the Respondent

Mike Rule, Vice President
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

## DECISION

On November 28, 2000, the American Federation of Government Employees, Local 3652 (the Charging Party or the Union), filed an unfair labor practice charge against the U.S. Department of Justice, Federal Bureau of Prisons, Metropolitan Correctional Center, Chicago, Illinois (the Respondent or MCC). This charge was amended on May 31, 2001. On June 25, 2001, the General Counsel of the Federal Labor Relations Authority, by the Regional Director of its Chicago Region, issued an unfair labor practice complaint alleging that the Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute). Specifically, the complaint alleged that the Respondent repudiated a collective bargaining

agreement between the parties when it failed to provide the Union with six reserved parking spaces in a General Services Administration (GSA) garage as required by Article 12 of that agreement. The Respondent filed its answer on July 23, 2001, admitting that since September 2000 it has not provided the Union with six reserved parking spaces in the sub-basement of the GSA garage but denying that its actions violated the Statute.

A hearing in this case was held in Chicago, Illinois, on November 14, 2001, at which all parties were present and afforded the opportunity to be heard, to introduce evidence, and to examine and cross-examine witnesses. The General Counsel and the Respondent subsequently filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

## FINDINGS OF FACT

The U.S. Department of Justice, Federal Bureau of Prisons, Metropolitan Correctional Center, Chicago, Illinois, is an agency as defined by 5 U.S.C. § 7103(a)(3). The American Federation of Government Employees (AFGE) is a labor organization as defined by 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a nationwide unit of employees of the Federal Bureau of Prisons. AFGE Local 3652 is an agent of AFGE for purposes of representing the slightly more than 150 bargaining unit employees assigned to MCC. AFGE and the Federal Bureau of Prisons are parties to a Master Agreement that covers bargaining unit employees assigned to the Respondent. The Union and the Respondent are parties to a local supplemental agreement that was executed in March 1999 and was in effect at the times material to the complaint in this case. In Article 12 of the local supplemental agreement, the Respondent agreed to

provide the Union a minimum of six parking spaces in the sub-basement of the GSA garage.[1]

The six parking spaces at issue in this case were located in a parking garage located at 450 South Federal Street in downtown Chicago, adjacent to the MCC. The parking garage, which is managed by GSA, consists of approximately 17 floors, contains approximately 1,000 parking spaces, and is used by approximately 40-50 different agencies. The ceiling clearance on the upper floors is lower than that on the lower floors and, consequently, oversized vehicles such as trucks are unable to access the upper floors. Each space in the garage costs the Respondent $258 per month.

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[1] Article 12 of the local supplemental agreement (G.C. Exh. 2) provides in relevant part:

> Presently, there are thirty (30) spaces in the GSA garage adjacent to the Metropolitan Correctional Center (MCC) and fifty-four (54) parking spaces at the off-site contract parking facility. Management agrees to provide the union with a minimum of six (6) parking spaces in the sub-basement of the GSA garage; however, the additional twenty-four (24) spaces will be under the discretion of the Warden. The fifty-four (54) parking spaces at the off-site contract parking facility will provide parking for bargaining unit and non-bargaining unit staff on an alphabetical rotational basis every three (3) months. All parking spaces are subject to negotiation and funding.
>
> Management and the union agrees that under no circumstances that funding will not be used as a ploy for not negotiating.

In the copy of this exhibit that was entered into evidence, the number 57 was written alongside of the first paragraph quoted above and over the number 54, which was scratched out, in the body of that paragraph. During his testimony, Jeffrey Jackson, the Union President, explained that this alteration reflected the discovery after the effective date of the local supplemental agreement that Respondent had 57 spaces rather than only 54 at the off-site contract facility. In any event, the number of spaces available at the off-site facility is not material to the complaint in this case.

The six spaces provided to the Union were used by the executive board of the Union.[2] Jackson stated that when it negotiated the six spaces, the Union specifically sought them in the sub-basement because it felt that location afforded its executive board comparable status to executive personnel of MCC, who had parking spaces on the first floor of the garage.

Prior to renovation of the garage, which occurred during the period August 1999 to approximately September 2000, all 1,000 spaces at the garage were reserved, that is, the agencies using the garage had specific spaces assigned to them. During the renovation, the Union executive board members were unable to park in the sub-basement but parked on level 2, which was designated for trucks. Prior to the completion of the renovation, GSA decided to reduce the amount of reserved parking available in the garage. Under this new policy, only 8 of the 17 floors would be used for reserved parking.[3] The Respondent played no role in this decision. As the completion of the renovation approached, Tucker notified Clarence Cranford, who held the position of Executive Assistant at MCC, by letter dated July 11, 2000,[4] that with the "re-opening" of the garage, there would be a limited amount of reserved parking available and the remainder of the garage would be subject to "open" parking. Resp. Exh. 1. The letter stated that due to the large number of agencies that used the garage, only a few reserved spaces would be available to each one. Tucker's letter advised that:

> Each agency that desires a reserved space must provide a list of the nature of the need (i.e. parking for disabled employee, emergency response vehicle, executive employee, etc.). The list should include the vehicle make/model, dimensions and any "special characteristics" about the vehicle, i.e. rack or lights on top, etc.

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[2] Although most of the Union's executive board members have trucks, some of them also have smaller vehicles available.

[3] These eight floors contained more than 100 but less than 500 parking spaces. Gina Tucker, who in 1999 and 2000 was an assistant property manager with GSA, was responsible for management of the garage and provided this information, did not know where within this range the actual figure lay.

[4] All dates are 2000 unless otherwise noted.

Resp. Exh. 1.5

During the hearing, Cranford stated that when he received this letter, he contacted Tucker and asked for clarification with respect to the three categories cited in her letter. According to Cranford, during their conversation, he informed Tucker of MCC's contractual agreement to provide the Union with six spaces and that he needed to know what GSA could accept insofar as the allocation of reserved parking spaces. Cranford stated that Tucker told him that GSA had decided that only three categories would receive reserved, assigned spaces. Cranford asserted that he asked Tucker what she meant by the term "executive" and whether she would consider union officials as executives. According to Cranford, Tucker responded that she meant Federal executives, i.e., those who work for the Federal government (Tr. 104-06).

In her testimony, Tucker stated that she was not sure whether she had any conversations with MCC management concerning parking spaces and did not remember talking to Cranford about parking spaces for the Union. During the hearing, Tucker was presented with an affidavit that she had given the General Counsel during the investigation prior to the issuance of the complaint in this case. In that affidavit, Tucker stated that although she had some discussion with management of MCC, there was no discussion concerning spaces reserved for the Union, what constituted an "executive" for purposes of parking spaces, or whether Union representatives could be considered "executives" for purposes of reserved parking spaces. G.C. Exh. 5. At the hearing, Tucker stated that in her affidavit she "might have been mistaken on a couple of things" and specifically pointed to her statement that there was no discussion with MCC concerning spaces for union representatives as something that she was not sure about. Tr. 60. Later in

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Tucker sent a substantially identical letter to other agencies that used the garage.

the hearing, Tucker was shown a copy of a letter dated

July 13, 2000, from her to Cranford that came to light during rebuttal testimony by Jackson. G.C. Exh. 6. Although the contents of the July 13 letter were for the most part the same as the July 11 letter that Tucker sent to Cranford, there were a couple of differences. One of the differences between the two letters was that the July 13 version substituted the phrase "federal executive staff employee" for "executive employee," which appeared in the July 11 version. When shown the July 13 letter, Tucker recognized the second version, did not remember why it was prepared, but thought that it must have been done in an effort to clarify the term "executive employee."[6]

I credit Cranford's testimony that he had a conversation with Tucker in which he asked her for clarification of her July 11 letter and mentioned the reason that he sought the clarification, i.e., the Respondent's contractual agreement to provide the Union with six parking spaces. In general, Cranford struck me as a credible witness and he demonstrated better recall than Tucker. Tucker had been reassigned to a different job in GSA in April 2001, and it was apparent that she had only a general recollection of the relevant facts of this case, both at the hearing and when she gave her affidavit. It is clear that Cranford was aware that there was a contractual provision regarding parking spaces for the Union. Tucker's letter of July 11 was, in many respects, not well crafted and, in particular, left unclear what "nature" of "need" qualified for reserved parking spaces under GSA's policy. It is probable that Cranford would have approached GSA, who controlled the parking garage, when confronted with the possibility of a conflict between GSA's policy and the contractual provision. Moreover, the fact that the July 13 letter rephrased the language relating to reserved spaces for "executives" lends further credence to Cranford's account that he specifically inquired about the meaning of the term "executive personnel" with Tucker.

According to Cranford, he met Union President Jackson just outside the elevator on the third floor and told him about the GSA letter as well as his conversation with Tucker, and he gave Jackson a copy of the letter either the same day he talked to Tucker or the day after. Cranford stated that during this conversation, he told Jackson that if he had any questions or concerns about GSA's policy, he

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When recalled as a witness and shown the July 13 letter, Cranford stated that he probably received it but was uncertain. Because the documents were so similar, he testified that he probably thought it was the same document as the July 11 letter.

should get in touch with Tucker. Jackson, on the other hand, stated that he did not have any conversations with Cranford during July regarding Tucker's letter and that the first time he learned that the Union was not being given six reserved parking spaces was around September 1.

I credit Cranford that he had a conversation with Jackson about Tucker's letter within a day or two of when he received the July 11 letter. I find it very possible that the significance and implications of what Cranford told Jackson may have escaped Jackson and may explain his failure to remember the conversation. The fact that the conversation occurred just outside an elevator indicates that it was casual and unscheduled in nature. According to Cranford, he provided a copy of Tucker's letter and an oral account of his conversation with Tucker during this encounter with Jackson. Cranford did not, either during this encounter or subsequently, provide any written notice to Jackson that set forth what was going to happen. Thus, there was nothing to underscore the significance of the conversation or reinforce Jackson's memory of it.

Cranford's testimony does not show that he communicated to Jackson or to the Union a firm idea of how he was going to respond to Tucker's letter with respect to requesting reserved parking spaces. Put another way, while Cranford's account shows that he advised Jackson of GSA's policy and Tucker's view of who was eligible for reserved parking spaces, it does not show that he clearly informed Jackson that the Respondent was going to acquiesce to her view and was not going to seek reserved parking spaces for the Union, in order to fulfill the terms of the contractual provision. Nor does Cranford's account show he communicated that Jackson should react or respond to him within a specific period of time.

Cranford stated that he waited a couple of days to give Jackson a chance to respond. Hearing nothing from Jackson, Cranford sent a memorandum to Tucker dated July 17, 2000, requesting a total of 6 reserved parking spaces and 26 "open" parking spaces.[7] Resp. Exh. 2. The memorandum identified the six reserved parking spaces as being assigned to specified management positions.

According to Cranford, GSA granted five of the six reserved spaces requested.[8] Tucker, on the other hand,

[7] One of the requested reserved spaces (duty officer) duplicated a requested open space.

[8] The sixth was for the duty officer.

testified that MCC got everything that it requested. On this point, I credit Cranford whose recall was far superior to Tucker's. Also, although Cranford demonstrated some confusion with respect to the total numbers requested, he would have been more likely to remember the specifics of what MCC was given than Tucker, who was responsible for managing a garage used by 40 to 50 different agencies and dealing with the requests from all of those agencies. Another factor contributing to confusion in Cranford and Tucker's testimony on this point was the fact that Cranford requested both a reserved space and an open space for the key card number assigned to the duty officer.

At some subsequent point prior to September 1, GSA gave to Cranford MCC's allocation of key cards and parking permits, which were color-coded and visibly different from what had been used in the past. Cranford in turn gave Jackson six key cards and six green parking permits for the Union's use. According to Cranford, he pointed out to Jackson that the Union had green permits and gave Jackson a copy of a GSA notice identifying green permits as authorizing open parking, as contrasted with reserved parking, and identifying which floors were designated for open and reserved parking. According to Jackson's account, Cranford merely gave him the permits without providing any further explanation or explanatory material. I credit Cranford that he provided the notice to Jackson. In view of the fact that parking practices were changing fairly substantially, it is only logical that some sort of printed notice would have been distributed to holders of the permits to explain the new system and that Cranford would have given the notice to the Union.

Jackson stated that he first learned that the Union was assigned to open parking spaces rather than reserved parking spaces in the sub-basement around September 1, when he arrived at the garage and was given a notice by security. This notice stated that, effective September 1, red (reserved parking) permits were for parking on floors 1, 2, 7, 8, basement and sub-basement; and green (open parking) permits were for parking on floors 3 through 6. G.C. Exh. 3. According to Jackson, he contacted Cranford, who told him that the Warden made all the decisions and to talk to him. Jackson stated that he also called GSA's Tucker, who told him to talk to Cranford. According to Jackson, he also met with Warden Graber the same day; during their conversation, Graber allegedly told Jackson that MCC management should never have agreed to this parking

provision, and he wasn't going to comply with it.[9] Other than this comment, Jackson did not provide any information about what said during this particular conversation.

Jackson's testimony is confusing as to the sequence and substance of his various conversations with Cranford, Tucker and Graber, and it appears that he omitted significant portions of the conversations, depriving his testimony of proper context and meaning. Furthermore, the evidence concerning his conversation with Ms. Tucker of GSA suggests that Jackson had previously been given a copy of Tucker's July letter, as Cranford insisted. Jackson stated that he had seen Tucker's name and telephone number on memos posted in the garage concerning the new parking procedures, and that he called her because he wanted to get some "informational background" before he met with the warden (Tr. 116). He also testified that nobody from MCC referred him to Tucker (*Id.*). These facts suggest that Jackson did not have a working relationship with Tucker prior to September 2000. However, G.C. Exh. 3, the notice Jackson previously identified as having been posted in the garage "from the GSA" immediately prior to September 1, does not identify Ms. Tucker or any other GSA official, nor does it even bear any indication that it came from GSA. Therefore, when Jackson sought out a GSA official to provide "informational background" for his meeting with the warden, the most plausible reason that he contacted Tucker is that Cranford had previously given him Tucker's July letter and suggested that Jackson talk to Tucker if he had any problems or questions about GSA's new policy. Although Jackson may not have grasped the significance of what Cranford was telling him at the time of their July conversation, it appears that Tucker's role in the parking situation did register in his memory and enabled him to recall that fact once the full implications of the change in parking practice became evident to him. In sum, I find that the Respondent, through Cranford, attempted to explain to the Union that the change in parking allocations had been initiated by GSA and suggested that the Union intervene directly with GSA.

Starting in September 2000, the Respondent provided six parking spaces in the 450 South Federal Street garage free of charge to the Union; however, they were neither reserved spaces nor in the sub-basement. At the same time, five reserved, assigned spaces were available for use by

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[9] According to Jackson, no one other than he and the warden were present during this conversation. Since Warden Graber did not testify, I find that Graber made the statement attributed to him by Jackson.

management personnel or official vehicles of the Respondent.[10]

Shortly after the terrorist attacks of September 11, 2001, however, parking procedures in downtown Chicago and in the GSA garage changed again. Prior to that date, the Respondent had been allowed to park its official and emergency vehicles on the street outside the correctional center.[11] After the terrorist attacks, the City of Chicago directed that for security reasons no vehicles could be parked on the street next to public buildings. In response, MCC reassigned its five reserved parking spaces

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[10] Cranford, who occupied one of the management positions for which a reserved parking space had been authorized, does not drive to work. MCC management either used his parking space to park one of its official vehicles or left the space vacant.

[11] These vehicles are used in transporting prisoners and must be readily available. Some are oversized and cannot access the upper floors of the garage.

in the Federal Street garage for the use of its official

vehicles and directed the management officials who had been parking there to use the unreserved spaces on floors 3 - 6 of the garage. At the time of the hearing in this case, the Respondent was still parking official vehicles in its reserved, assigned spaces.

In a memorandum to Warden Graber dated October 25, 2000, the Union called upon the Respondent to abide by the local supplemental agreement and requested a written response on how the Respondent was going to resolve the parking issue. No response to this memorandum was entered into evidence.12

## DISCUSSION AND CONCLUSIONS

### Issues and Positions of the Parties

The General Counsel alleges that the Respondent violated section 7116(a)(1) and (5) of the Statute by repudiating the parties' local supplemental agreement. Citing *Department of the Air Force, 375th Mission Support Squadron, Scott Air Force Base, Illinois*, 51 FLRA 858 (1996) (*Scott Air Force Base*), the GC asserts that MCC management committed a clear and patent breach of that agreement and that the provision breached went to the heart of the agreement.

In this case, the General Counsel argues that Respondent's undisputed failure to provide the Union with six parking spaces in the sub-basement of the GSA parking garage was a clear violation of the parties' agreement. The General Counsel further argues that the Respondent's action went beyond merely a violation to a repudiation of the agreement, contending that the evidence, specifically Graber's comment during his meeting with Jackson, suggests that Graber refused to honor the agreement because he didn't like it. The GC argues that providing the Union with six spaces in the sub-basement went to the heart of the parties' "parking agreement." In this regard, the General Counsel contends that providing the Union with six sub-basement parking spaces constituted one of only two elements in the "parking agreement" and afforded the Union's executive board equal status to the warden's executive staff.

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12 The Respondent sought to introduce a memo from Graber to Jackson dated November 14 (Tr. 34), but it was never identified by a witness and was therefore not admitted.

The General Counsel further contends that despite the fact the Respondent controlled the use of the reserved parking spaces assigned to it in the GSA garage, it made no effort to comply even partially with the agreement. This demonstrates, in the GC's view, that Warden Graber used the renovation of the garage and the letter from Tucker as an opportunity to abandon the parking provision, which he didn't like to begin with.

Finally, the General Counsel argues that the Respondent has not established any justification for its repudiation of the parking provision of the local supplemental agreement. In his view, the Respondent's action could only be justified if the agreement conflicted with a law, rule or regulation, none of which was proved here.

As a remedy, the General Counsel requests that Respondent be ordered to cease and desist, post a notice to employees, reassign its five remaining reserved parking spaces to the Union, and seek an additional space from GSA to be assigned to the Union. The General Counsel contends that the Respondent can contract with another parking facility for parking spaces to meet its post-September 11 need for spaces in which to park its official vehicles.

In its defense, the Respondent first notes that the complaint alleges not a unilateral change in working conditions, but a repudiation of the local agreement, which involves a different and higher standard of proof. Thus while it agrees that it violated the letter of the parking agreement and implemented a change in its terms, Respondent argues that it sought to comply with the agreement as best as it could. Specifically, Respondent contends that the alteration of the Union's parking privileges was caused by GSA and that MCC had little or no input into GSA's actions. Citing *United States Penitentiary, Florence, Colorado*, 54 FLRA 30 (1998) (*U.S. Penitentiary, Florence*), the agency

argues that because any failure to comply with the

contractual provisions was due to factors beyond its control, there was no clear and patent breach of the contract. Additionally, the Respondent asserts that it has not disavowed its obligations under the local supplemental agreement; rather, it sought clarification from GSA before making its request to GSA for parking allocations. When GSA would not allocate reserved parking for Union officials, the Respondent continued to pay for and provide six unreserved parking permits to the Union. Thus, Respondent argues that it has done all it could to fulfill the requirements of the local agreement.

The Respondent also contends that a "*status quo ante*" remedy is inappropriate based on the factors specified in *Federal Correctional Institution*, 8 FLRA 604, 606 (1982). In particular, the Respondent asserts that such a remedy would disrupt its operations. In support of this claim, the Respondent argues that events subsequent to September 11, 2001, have altered the status quo that existed prior to the alleged ULP and cannot be restored by MCC officials. The vehicles that it now parks in its five reserved spaces must be located near the institution to allow quick access in emergencies and to transport inmates securely.

## **Analysis**

Although the Respondent's actions in this case could have been alleged as a unilateral change of working conditions as well as a contract repudiation, the General Counsel chose to allege only repudiation in the complaint, and I will evaluate the complaint only in terms of the repudiation theory. *See*, Tr. 13-15. While counsel for the GC suggested that I could alternatively find a ULP based on a unilateral change if I didn't accept the repudiation allegation (Tr. 13), no actual motion to amend the complaint was made. More fundamentally, however, it would be unfair for me to find a unilateral change violation here, as that theory was not fully litigated at the hearing. *See, U.S. Department of Labor, Washington, D.C.*, 51 FLRA 462, 467 (1995).

When a party is accused of violating the Statute by failing or refusing to honor a collective bargaining agreement, the Authority considers both the nature and the scope of the alleged breach of the agreement. *Scott Air Force Base*, 51 FLRA at 861-63. Not every violation of a labor contract amounts to an unfair labor practice. However, where the nature and scope of the breach amount to the repudiation of an obligation imposed by the agreement's terms, the Authority will find a violation of the Statute.

In determining whether the breach of an agreement amounts to a repudiation, two factors are examined: (1) the nature and scope of the alleged breach of an agreement (i.e., was the breach clear and patent?); and (2) the nature of the agreement provision allegedly breached (i.e., did the provision go to the heart of the parties' agreement?). *Id.; see also Department of the Air Force, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia*, 52 FLRA 225, 230-31 (1996)(*Warner Robins*).

Applying the Authority's analytical framework to the facts and circumstances in this case, I find that no repudiation occurred.

With respect to the first factor in the analytical framework, Article 12 of the parties' local supplemental agreement clearly requires that the Union be provided six parking spaces in the sub-basement level of the GSA parking garage. Prior to the garage renovation, this meant that the Union's parking spaces were to be reserved, although the agreement did not expressly state the requirement in such terms. It is also clear that since September 2000 the Respondent has failed to provide the Union with any reserved spaces, either in the sub-basement or any other location. The agreement is not at all clear, however, as to what the Respondent was obligated to do in the circumstances of this case, where an outside agency (GSA) initiated parking changes that made it impossible for MCC to fully comply with Article 12.

GSA's letter to MCC and other garage tenants indicates that GSA unilaterally changed the parking arrangements and that fewer reserved spaces would be available. Although it allowed tenants to request reserved spaces, GSA indicated that reserved spaces could be granted only for certain specified reasons. Mr. Cranford asked the appropriate GSA representative if Union officials could be given reserved spaces, and he was told they couldn't. He then submitted a written request to GSA for six reserved spaces for six

management officials and for 26 additional unreserved

spaces, but GSA gave MCC only five reserved spaces and 26 unreserved spaces. Based on these facts, even if the Respondent had taken the five reserved spaces away from the warden and four other managers and reassigned those spaces instead to the Union, it still would not have fully complied with the requirement of providing six reserved spaces for the Union.

In light of the fact that the changed parking arrangements were imposed on MCC as much as they were on the Union, the local supplemental agreement provides little guidance for either party. One hint from the language of the agreement is that the parking provision begins with the words, "Presently, there are thirty (30) spaces in the GSA garage . . ." and ends with the words, "All parking spaces are subject to negotiation and funding." Although neither party has shed much light on the meaning of the provision, the language could reasonably support an argument that the Union's parking rights were at least partly dependent on "present" circumstances, and that changed circumstances (such as the number of available spaces and funding) would require the parties to negotiate. This is certainly not the only interpretation of the agreement, but it supports the Respondent's argument that because its failure to comply with the reserved parking requirement was due to circumstances beyond its control, its breach should not be considered "clear and patent." I agree with the Respondent, and the case it cites, *U.S. Penitentiary, Florence*, is pertinent. There, as here, the agency's failure to comply with a contractual requirement was due to factors beyond its control, and the Authority held that a clear and patent breach had not occurred. 54 FLRA at 31.

I do not find that Graber's comment to Jackson, to the effect that the agreement should not have been made and that he would not comply with it, warrants a different conclusion. Jackson's testimony did not provide any further details of the dialogue between himself and Graber in which the comment occurred, and consequently, the remark as reported by Jackson is devoid of any immediate context. The evidence shows, however, that the Jackson-Graber conversation occurred in the aftermath of the changes in parking imposed by GSA, when it was no doubt evident to

Graber that MCC had made a commitment to deliver something

that it did not control. Given this larger context and in the absence of further information about the remainder of the Jackson-Graber conversation, it is difficult to determine whether Graber's reference to noncompliance with the contractual requirements reflected his view that MCC could not comply because of the limitations imposed by GSA or reflected an intent to flout the contract. Particularly in view of the fact that the Respondent continued to provide the Union with six parking spaces at a cost to the Respondent of $258 per month for each one, I find the latter less probable than the former.

Looking at the second prong of the *Scott Air Force Base* test, I further find that the nature of the provision in question did not "go to the heart of the parties' agreement." The Authority's decisions indicate that in evaluating this issue, the focus of the analysis is on the importance of the particular provision alleged to be breached relative to the agreement in which it is contained and the collective bargaining relationship. For example, in *Warner Robins*, 52 FLRA at 231-32 (1996), the Authority found that a local activity's failure to maintain indoor smoking facilities until negotiations over outdoor smoking facilities were completed constituted a repudiation of a nationally-negotiated agreement on smoking policy. In finding that the local activity's action went to the heart of the higher-level agreement, the Authority noted that the only purpose of the latter agreement was to provide guidance concerning the smoking policy change, and that three of its nine provisions specifically required that the *status quo* be maintained pending completion of local negotiations over outdoor smoking facilities. Additionally, the Authority found that as the agreement governed how parties would bargain at the lower level over a matter of significant concern to employees, the action also went to the heart of the collective bargaining relationship itself. 52 FLRA at 232. A similar analysis was employed by the ALJ in *Federal Aviation Administration*, 55 FLRA 1271, 1286 (2000), in concluding that the agency repudiated a memorandum of understanding (MOU) relating to performance matters when it failed to give performance-linked awards. The determinative factors in this finding

were that the link between performance ratings and

performance awards was a "core aspect" of the MOU; performance awards were a matter of significant concern to employees; and three of nine provisions in the MOU concerned performance awards.

Other decisions show the same focus. In *24th Combat Support Group, Howard Air Force Base, Republic of Panama*, 55 FLRA 273 (1999), the Authority found that respondent repudiated parties' collective bargaining agreement when it terminated the grievance procedure as to non-preference eligible excepted service (NEES) employees. In this decision, the Authority stated: "[W]e find that the negotiated grievance procedure goes to the heart of the parties' agreement. This is self-evident because, among other things, it is required by section 7121 of the Statute to be in every collective bargaining agreement." On the other hand, in *American Federation of Government Employees, AFL-CIO, Local 1909, Fort Jackson, South Carolina*, 41 FLRA 18 (1991), the Authority held that a union's failure to pay its share of an arbitrator's expenses was not a repudiation of the contractual agreement. Because the union's breach of the contract was based on a lack of funds in its treasury and extended only to a single arbitration, its actions did not undermine the negotiated grievance-arbitration procedure and did not go to the "core of the contractual relationship." 41 FLRA at 20. And in *U.S. Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, Washington, D.C.*, 41 FLRA 154, 169-72, the Authority rejected an allegation that the respondent repudiated the parties' collective bargaining agreement when it failed to advise certain employees of a right to representation at an examination relating to misconduct. In dismissing the allegation that the action constituted a repudiation of the parties' agreement, the Authority noted that although the notification portion of the relevant agreement provision facilitated an important union representational responsibility, it did not "go to the core of the contractual relationship." *Id.* at 172.

The provision that is the focus of the complaint in this case was contained in a local supplemental agreement that addressed a broad range of employment issues. Article 12 is entitled "Use of Official Facilities" and covers the Union's use of rooms in the MCC for meetings, bulletin boards for communications, phones and computers for Union

business. The issue of parking for Union officials is only

one small part of this article, which in turn is only one of 42 articles covered in the local supplement. Placed in the context of the agreement and the collective bargaining relationship as a whole, the provision on parking is not a particularly significant aspect of the agreement or of the collective bargaining relationship. In the facts of this case, I do not agree with the General Counsel's argument that the reserved parking guaranty, by affording Union officials parking of comparable status to management officials, is central or key to the agreement or to the bargaining relationship. The overall thrust of Article 12 is not to elevate Union officials to management or executive status, but rather to afford them the ability to carry out their duties in representing employees. In this respect, it is significant that the Respondent continued to pay for six Union parking spaces in the GSA garage, thereby giving Union officials priority over other employees in using the garage and enabling them to carry out their representational functions. Whether the reserved parking guaranty is evaluated objectively or subjectively, it does not go to the heart of the parties' agreement or relationship.

Based on the foregoing, I conclude that although the Respondent's failure to provide the Union with six parking spaces in the sub-basement arguably breached the parties' agreement, it did not amount to a clear and patent breach, and the provision arguably breached did not go to the heart of the parties' agreement.

My decision in this case should not be interpreted as full approval of the Respondent's actions in responding to the parking changes imposed on it by GSA. There is no question that these changes were subject to bargaining with the Union. Cranford's casual, unwritten notice to Jackson of the changes was less than ideal, and it can only be speculated as to how strenuously Cranford "fought" for the Union's reserved parking spaces when he spoke to GSA's Ms. Tucker. Those questions, and others related to interpreting the extent of MCC's parking obligations to the Union under Article 12 in light of the changes imposed by GSA, might have been addressed if the Union had sought recourse under the parties' grievance-arbitration

procedure, or if the unfair labor practice complaint had

alleged a failure to bargain appropriately over the changed working conditions. But they are not material to whether the Respondent repudiated the local supplemental agreement.

Accordingly, I recommend that the Authority issue the following Order:

**ORDER**

IT IS ORDERED that the Complaint be, and hereby is, dismissed.

Issued, Washington, DC, August 1, 2002

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RICHARD PEARSON
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. CH-CA-01-0127, were sent to the following parties in the manner indicated:

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Dated: August 1, 2002
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