UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 12 Charging Party	Case No. WA-CA-04-0061

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. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JULY 25, 2005**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20005

ELI NASH
Chief Administrative Law Judge

Dated: June 22, 2005
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: June 22, 2005

TO: The Federal Labor Relations Authority

FROM: ELI NASH
Chief Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF LABOR
WASHINGTON, D.C.

Respondent

and Case No. WA-CA-04-0061

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 12

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

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 12 Charging Party	Case No. WA-CA-04-0061

Gerard M. Greene, Esquire
For the General Counsel

James V. Blair, Esquire
For the Respondent

Robert E. Paul, Esquire
For the Charging Party

Before: ELI NASH
Chief Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ *et seq.* (the Statute).

Based upon an unfair labor practice charge filed against the U.S. Department of Labor, Washington, D.C., (herein called Respondent), by the American Federation of Government Employees, Local 12, (herein called Union). A Complaint and Notice of Hearing was issued by the Regional Director of the Washington Region of the Federal Labor Relations Authority. The case was transferred to the Boston Region on December 11, 2003. The Complaint alleges that the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (8) by failing to comply with a final and binding arbitration award after the Authority denied the Respondent's exceptions in *U.S. Department of*

Labor, Washington, D.C. and American Federation of Government Employees, Local 12, 59 FLRA 131 (2003) *Labor*.

A hearing was held in Washington, D.C. at which all parties were present and afforded the opportunity to be heard, to introduce evidence and to examine and cross-examine witnesses. In lieu of testimony, the parties agreed to a Stipulation of Facts and Joint Exhibits.[1]

Findings of Fact

A. Stipulation of Facts

In a joint stipulation with attachments, the parties stipulated to the following facts, among others.

Respondent is an agency under 5 U.S.C. § 7103(a)(3). The Union is a labor organization under 5 U.S.C. § 7103(a)(4), and the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent. At all times material herein, the Union and the Respondent were parties to a collective bargaining agreement, effective March 15, 1992, (herein the Agreement) covering the employees in the bargaining unit.

B. Arbitrator's Decision and Award

In his decision dated October 30, 2001, which the parties have stipulated into the record, Arbitrator M. David Vaughn sustained a grievance filed by the Union over the unilateral implementation by the Respondent of an automated time and attendance system for employees on flexitime. The Arbitrator found that the Respondent could not unilaterally change the paper time reporting system provided by Article 4 of the Agreement, and could not require the Union to bargain over a change during the term of the Agreement. To remedy the violation, the Arbitrator ordered the Respondent to cease and desist its implementation of the system, and to restore the *status quo ante* negotiated time and attendance system for bargaining unit employees. The Arbitrator also allowed the Respondent to continue to make the automated system available for unit employees on a voluntary basis for so long as it provides it to non-unit employees. On December 14, 2001, the Arbitrator issued a Clarification of Award, finding that the Respondent could not require bargaining unit employees to use an automated system for payroll reporting and could not use the electronic

[1] Respondent also made a motion to hold this matter in abeyance pending the resolution of a new Article 4 by the Federal Service Impasses Panel.

information input by unit employees, voluntarily or otherwise, to prepare its payroll.

Thereafter, on February 5, 2002, just before filing exceptions to the Arbitrator's award, the Respondent informed the Union that it planned to implement a new automated time and attendance system and that all employees, regardless of their type of work schedule, would be required to use it. On February 8, the Union replied with a warning that the Respondent could not require the Union to bargain and could not implement a new system without the Union's agreement. In response to announcements indicating that the Respondent would implement the new automated system on August 4, 2002, the Union reiterated its objections in a letter to the Respondent on June 26. From late 2002 to February 2003, the Respondent implemented the new automated time and attendance system known as "PeopleTime."

Subsequently, on September 12, 2003, the Authority denied the Respondent's exceptions to Arbitrator Vaughn's Award, as modified by the Clarification, in *United States Department of Labor, Washington, D.C.*, 59 FLRA 131 (2003). On October 1, 2003, the Union requested the Respondent comply with Arbitrator Vaughn's award. The Respondent replied on October 23, refusing to comply on grounds that its implementation of a new automated time and attendance system rendered the award moot, and the Union had not filed a grievance or requested to bargain when given an opportunity.

Respondent has used the automated electronic information about time, attendance and leave that has been reported by bargaining unit employees who are on flexitime to prepare its payroll at all times relevant to this case. Since the issuance of the Authority's decision, Respondent has required bargaining unit employees on flexitime to use an automated, electronic system to report and record time, attendance and leave, and has used the information input electronically by the employees to prepare its payroll. Also, since the issuance of the Authority's decision, the Respondent has not reinstated the negotiated manual time and attendance reporting system described in Arbitrator Vaughn's Award and Clarification of Award.

Discussion, Conclusions of Law and Recommendations

A. The Applicable Law

Under section 7122(b) of the Statute, an agency must take the action required by an arbitrator's award when that

award becomes "final and binding." The award becomes "final and binding" when there are no timely exceptions filed to the award under section 7122(a) of the Statute or when timely exceptions are denied by the Authority. *U.S. Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington*, 55 FLRA 293 (1999); *U.S. Department of the Air Force, Carswell Air Force Base, Texas*, 38 FLRA 99, 104 (1990) (*Carswell*); *U.S. Department of Health and Human Services, Health Care Financing Administration*, 35 FLRA 491, 494-95 (1990) *HHS*. An agency that fails to comply with a final and binding award violates section 7116(a)(1) and (8) of the Statute. *United States Department of the Treasury, Internal Revenue Service, Austin Compliance Center, Austin, Texas*, 44 FLRA 1306, 1315 (1992); *U.S. Customs Service, Washington, D.C.*, 39 FLRA 749, 757-58 (1991) (Customs).

It is equally well established that an agency cannot collaterally attack an arbitration award during the processing of an unfair labor practice complaint alleging an unlawful failure to comply with that award. *U.S. Department of Veterans Affairs Medical Center, Allen Park, Michigan*, 49 FLRA 405, 426 (1994); *United States Air Force, Air Force Logistics Command, Wright-Patterson AFB, Ohio*, 15 FLRA 151, 153-54 (1984) (Wright-Patterson), *affirmed sub nom. Department of the Air Force v. FLRA*, 775 F.2d 727 (6th Cir. 1985). As the Authority stated in Wright-Patterson:

> To allow a party which has not filed exceptions to an award to defend its failure to implement that award in a subsequent unfair labor practice proceeding on grounds that should have been raised as exceptions to the award under section 7122, such as in this case, would circumvent the procedures provided in section 7122(a) and frustrate Congressional intent with respect to the finality of arbitration awards.

Id. at 153. See, also, *Carswell*, 38 FLRA at 107; *Department of the Air Force, Headquarters, 832d Combat Support Group DPCE, Luke Air Force Base, Arizona*, 32 FLRA 1084, 1097-98 (1988).

B. Did Respondent Violate the Statute in this Case

Applying the foregoing principles to the circumstances of this case, I conclude that the Respondent violated section 7116(a)(1) and (8) of the Statute as alleged in the complaint. Thus, the parties stipulated that the arbitrator issued his Decision and Award on October 30, 2001, and that

the Authority denied exceptions to that award on September 12, 2003, with the Authority under section 7122(a) of the Statute. Finally, the Respondent never sought to involve the Union in the process of compliance with the arbitrator's award. Accordingly, I conclude that the Respondent violated section 7116(a)(1) and (8) of the Statute in the circumstances of this case.

The Authority will not review the merits of an arbitration award in a ULP proceeding. See, *e.g.*, *United States Army Adjutant General Publications Center, St. Louis, Missouri*, 22 FLRA 200, 206 (1986). As the Authority has repeatedly stated that allowing a respondent to litigate matters that go to the merits of the award would circumvent Congressional intent with respect to statutory review procedures and the finality of arbitration awards. See, *e.g.*, *Wright-Patterson*, 15 FLRA 151. See also *Department of Health and Human Services, Social Security Administration*, 41 FLRA 755, 765-66 (1991), *enforced sub nom. Department of Health and Human Services v. FLRA*, 976 F.2d 1409 (D.C. Cir. 1992) (under section 7122 of the Statute, arguments that go to the merits of an arbitration award are not litigable in a ULP proceeding brought to enforce the award).

In enforcing *Wright-Patterson,* the court in Department of the Air Force explained that, "[s]ince the award becomes final and must be implemented if the parties fail to file an exception within the required period, the necessary implication is that a party can no longer challenge the award by any means. It has become final for all purposes." 775 F.2d at 735 (emphasis added). In *U.S. Department of Justice v. FLRA*, 792 F.2d 25 (2d Cir. 1986), an unfair labor practice case, the Second Circuit refused to indirectly review the Authority's decision that denied exceptions to an arbitrator's award. In reaching this decision, the court noted from the legislative history that it was the "intent of the House . . . to make clear that the awards of arbitrators, when they become final, are not subject to further review by any other authority or administrative body . . . ." 792 F.2d at 29. The court ruled that in view of the language of the Statute and the legislative history, Congress did not intend indirect review of arbitration awards. The court further ruled that such indirect review "runs counter to public policy." *Id.* The court noted that such indirect review could result in excessive delay and expense contrary to the public policy underlying arbitration awards that favors quick, definite, and inexpensive resolution of labor disputes.

As noted, it is well established that, under section 7122(b) of the Statute, an agency must take the action required by an arbitrator's award when that award becomes "final and binding." The award becomes "final and binding" when there are no timely exceptions filed under section 7122(a) of the Statute or when timely filed exceptions are denied by the Authority. *Carswell*, 38 FLRA 99; *HHS*, 35 FLRA at, 494-95. Disregard of an unambiguous award is an unfair labor practice under section 7116(a)(1) and (8) of the Statute. *IRS Austin*, 44 FLRA at 1315; Customs, 39 FLRA at 757-58.

The Arbitrator's award in this case was dated October 30, 2001. It is undisputed that after Respondent's exceptions were denied by the Authority, the award became final and binding and Respondent was required under the Statute to comply with the award. Arbitrator Vaughn's award, as modified by the Clarification, is clear and unambiguous. Furthermore, the Respondent's replacement of one automated time and attendance system with another does not excuse it from compliance. The Union did not waive its right to compliance by not grieving or requesting bargaining over "PeopleTime." The Respondent's conduct since the issuance of the Authority's decision shows that it has not complied with the Award as modified by the Clarification.

The Respondent failed to comply with 5 U.S.C. §§ 7121 and 7122 by not implementing the final and binding award of Arbitrator M. David Vaughn. Arbitrator Vaughn's Award, as modified by the Clarification, became final and binding within the meaning of 5 U.S.C. § 7122 when the Authority denied the Respondent's exceptions. *HHS,* 35 FLRA at, 494-495. Thus, the Respondent was obligated to implement the Award and Respondent admits that it refused to do so. An agency violates 5 U.S.C. § 7116(a)(1) and (8) by failing to comply with an arbitrator's award upon the denial of exceptions by the Authority. *HHS,* pp. 495-497. This is not a case where the terms of an arbitrator's award lack sufficient clarity or are ambiguous, and in fact the Respondent does argue that its actions were consistent with a reasonable construction of the terms of Arbitrator's Vaughn's Award. *See*, *U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Marianna, FL*, 59 FLRA 3 (2003) (Authority found that award is ambiguous as the arbitrator failed to define "good cause" and "administrative convenience"). Here Respondent has simply refused to recognize the Award as valid and effective, despite the Authority's denial of its exceptions. The terms of Arbitrator Vaughn's Award, as modified by the Clarification, are clear and unambiguous: restore the negotiated manual time and attendance system, and stop using

electronic data input by bargaining unit employees to prepare its payroll. Because the Respondent has done neither, it has failed to comply with the Award.

Respondent in its defense, claims the grounds that it relied on when rejecting the Union's request for compliance in October 2003 was a new "PeopleTime" electronic means of keeping time. But the implementation of "PeopleTime" is not an excuse, or grounds for asserting that the Vaughn Award is moot. See, *American Federation of Government Employees, Local 3230*, 59 FLRA 610, 611-612 (2004) (*AFGE*) (Authority set aside an arbitrator's determination that the ULP issue involved in the grievance was moot, since an arbitrator must apply the same standards and burdens as an ALJ would in a § 7118 proceeding).

The burden is on the party asserting mootness to show that: 1) there is no reasonable expectation that the alleged violation will recur, and 2) interim relief or events have completely or irrevocably eradicated the effects of the alleged violation, and thus neither party has a legally cognizable interest in the final determination of the underlying issues of fact and law.

Insisting that the Award has been overtaken by events with the introduction of new software is simply circuitry. Arbitrator Vaughn ordered affirmative relief when Respondent was directed to restore the negotiated system. Merely discontinuing one system and choosing another hardly equals compliance. It is crafty to claim that Arbitrator Vaughn's Award concerned only "the use of the ATA system," as the Respondent wrote on October 23. However, neither the Arbitrator nor the Authority viewed the Award as concerning a particular software application, or software that is stored on a server instead of an intranet web. The term "ATA" is simply an abbreviation of "automated time and attendance" and both the Arbitrator and the Authority understood that the issue depended not on a label or a brand name, but simply involved requiring employees to fill out their time sheets through software rather than manually filling out time sheets consistent with Article 4. *Labor*, 59 FLRA 131 (2003).

Respondent could have raised mootness in its exceptions to the Award. The record reveals that, the Respondent notified the Union of its plans for "PeopleTime" before it filed exceptions. However, Respondent did not assert to the Authority that its plans would render the Award moot; instead, it contended only that the Arbitrator exceeded his authority and the award is contrary to law. *Labor*, 59 FLRA at 133. Arbitrator Vaughn explicitly found that Respondent

could not unilaterally change the negotiated time and attendance system, and could not require the Union to bargain over a change, during the term of the Agreement. Yet, although the Agreement was in effect, Respondent proceeded to implement a new automated time and attendance system over the Union's clearly stated objection. Even after the Authority's decision, and while the Agreement has continued in effect, the Respondent asserted in defense that the Union has had an opportunity to bargain.

Additionally, there is no reason to believe that the Respondent learned from its mistakes and would not again commit a similar offense. Further, the Union clearly had a statutory right to insist on adherence to a negotiated agreement. Furthermore, since it prevailed before the Arbitrator, any argument that it waived its right to obtain compliance by not requesting to bargain or by not grieving Respondent's replacement of one software application with another lacks support. In short, little or no basis exists for concluding that Arbitrator Vaughn's Award was moot by the time the Authority denied the Respondent's exceptions. Therefore, it is concluded that the Union continues to have a legally cognizable interest in obtaining compliance with the Vaughn Award and Respondent admittedly has failed to implement the remedy set forth in the Award since its exceptions were denied by the Authority.

At the hearing, as previously noted, the Respondent requested the undersigned take official notice of a complaint that was issued by the General Counsel in Case No. WA-CO-02-0614. Subsequently, an administrative law judge heard and decided the issue in that case. I decline to grant Respondent's request since that case involves a matter unrelated to any of the issues herein. *See, Department of the Air Force, Headquarters Air Force Logistics Command, Wright-Patterson AFB, OH*, 22 FLRA 529, 532, n. 1 (1986) (Authority declined to take official notice of evidence presented in a different case). Also noted is Respondent request that the case be held in abeyance pending action by the Federal Service Impasses Panel(Panel)in a related matter. 2 Essentially, the Respondent's defenses are nothing more than a collateral attack on Arbitrator Vaughn's Award. It is clear that the Authority will not condone noncompliance with a final and binding arbitration award, whether it is based on the party's own beliefs and conduct

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The Panel issued its decision in Case No. 04 FSIP 111 on January 7,2005. In granting Respondent's motion and considering the Panel's above numbered decision, it is found that the decision of the Panel regarding Article 4 is not material to the issues in this case.

or on circumstances beyond the party's control. *U.S. Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, Renton, WA*, 55 FLRA 293 (1999) (FAA).

Accordingly, it is found that the Respondent failed to comply with section 7121 and 7122 of the Statute and thereby violated the Statute, as alleged.

C. The Appropriate Remedy

The traditional affirmative remedy in a case of failure to comply with an arbitrator's final and binding award is an order specifically requiring the respondent to comply with the terms of such award. See, e.g., *U.S. Department of Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida*, 31 FLRA 603, 605-06 (1990); *Customs*, 39 FLRA at 759-60; *Carswell*, 38 FLRA at 107-08. This traditional remedy is the one requested by the General Counsel. Respondent of course denies that any remedy is appropriate herein. For the reasons set forth below, I conclude that the General Counsel's request for a traditional remedy would effectuate the purposes and policies of the Statute and should, therefore, be granted.

Indeed a question might be raised here as to whether events have overtaken the case and a standard remedy such as requested by the General Counsel would still be appropriate. Any remedy, other than the one requested by the General Counsel would be nontraditional. The Authority has discussed its approach to evaluating requests for nontraditional remedies in *F.E. Warren Air Force Base, Cheyenne, Wyoming*, 52 FLRA 149 (1996) (Warren) and *Department of Veterans Affairs Medical Center, Phoenix, Arizona*, 52 FLRA 182 (1996). In *Warren*, the Authority concluded that nontraditional remedies must satisfy the same broad objectives that the Authority described in *U.S. Department of Justice, Bureau of Prisons*, Safford, Arizona, 35 FLRA 431, 444-45 (1990) (Safford). That is, assuming there are no legal or public policy objections to a nontraditional proposed remedy, the questions are whether the remedy is reasonably necessary and would be effective to "recreate the conditions and relationships" with which the unfair labor practice interfered, as well as to effectuate the policies of the Statute, including the deterrence of future violative conduct. *Warren*, 52 FLRA at 161; *Safford*, 35 FLRA at 444-45. As the Authority additionally noted in *Warren*, the above questions are essentially factual and therefore should be decided in the same fashion that other factual issues are resolved: the General Counsel bears the

burden of persuasion, and the Judge is responsible initially for determining whether the remedy is warranted.

It is assumed that there are no legal or public policy objections to the remedy proposed by the General Counsel herein. In essence, Respondent's, objection to the General Counsel's proposed remedy is that the matter was mooted by the introduction a "PeopleTime". Even if true, this does not amount to a legal or public policy objection. Indeed, public policy considerations favor the General Counsel's position. Thus public policy as expressed by Congress in the Statute requires parties to comply with final and binding arbitrators' awards. In my view, it would not further such public policy to permit a validly obtained award to be ignored by a losing party when that party failed to advise the arbitrator--either at the hearing or after the award was issued and while the arbitrator still retained jurisdiction to resolve compliance problems--of anticipated or known difficulties in effectuating compliance, and implemented a system inconsistent with the Arbitration award. Respondent cannot be permitted to profit from its own actions that were inconsistent with the Award.

Moreover, it is not at all clear that the remedy proposed by the General Counsel is inconsistent with the intent and scope of the arbitrator's award. To the extent that the arbitrator's intent can be discerned, it appears that he wanted to provide the remedy preferred by the Union. It is impossible to determine what revisions to his award the arbitrator would have made if the compliance problem had been brought to his attention in a timely manner. In any event, the Respondent's failure to notify the arbitrator or to involve the Union in the compliance process created the uncertainty as to what action the arbitrator would have required, and it would not effectuate the purposes and policies of the Statute to permit the Respondent to profit from that uncertainty.

What has been said thus far also supports a conclusion that the General Counsel's proposed traditional remedy is reasonably necessary and would be effective in re-creating the conditions and relationships with which the unfair labor practice interfered; and would effectuate the purposes and policies of the Statute, including the deterrence of future violative conduct. Based on the instant record, the undersigned sees no impediment to Respondent's compliance with the October 30, 2001 Award.

Accordingly, having found that the Respondent violated section 7116(a)(1) and (8) of the Statute, and that a traditional remedy is appropriate in the circumstances of

this case, it is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the U. S. Department of Labor, Washington, D.C., shall:

1. Cease and desist from:

(a) Failing to comply with the final and binding arbitration award of Arbitrator M. David Vaughn, as modified by the Clarification of Award, directing the Respondent to restore the *status quo ante* negotiated time recording system for bargaining unit employees on flexitime, and to refrain from using electronic information about unit employees' time and attendance which would come into its possession solely through the use of ATA by employees beyond the purposes provided for and contemplated by Article 4 section 3 of the parties' Agreement.

(b) In any like or related manner, interfering with, restraining or coercing bargaining unit employees in the exercise of rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Comply with Arbitrator M. David Vaughn's Award, as modified by the Clarification of Award, by restoring the *status quo ante* negotiated time recording system for bargaining unit employees on flexitime, and by refraining from using automated electronic information about unit employees' time and attendance to prepare the employees' payroll.

(b) Post at its U.S. Department of Labor, Washington, D.C facilities, where bargaining unit employees represented by the American Federation of Government Employees, Local 12 are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Secretary of Labor, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Boston Regional Office, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, June 22, 2005.

_____

ELI NASH
Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

In September 2003, the Federal Labor Relations Authority issued a decision, United States Department of Labor, Washington, D.C. and American Federation of Government Employees, Local 12, 0-AR-3485, 59 FLRA 131, 59 FLRA No. 25, denying the Department's exceptions to an award of Arbitrator M. David Vaughn. Upon issuance of the Authority's decision, the award of Arbitrator Vaughn became final and binding. On October 1, 2003, Local 12 requested the Department comply with Arbitrator Vaughn's award. In reply, the Department claimed that the matter was moot, and for that reason the Department did not comply with the award.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE RECOGNIZE that the Federal Service Labor-Management Relations Statute requires an agency to take the actions required by an arbitrator's final award.

WE WILL NOT fail to comply with Arbitrator M. David Vaughn's October 30, 2001 Award and and December 14, 2001 Clarification of Award directing the Department to cease and desist from implementing an automated time and attendance system for bargaining unit employees and to restore the *status quo ante* negotiated time recording system.

WE WILL NOT in any like or related manner fail or refuse to comply with section 7122 of the Federal Service Labor-Management Relations Statute.

WE WILL comply with Arbitrator Vaughn's Award and Clarification of Award by restoring the *status quo ante* negotiated time recording system for bargaining unit employees, and by ceasing to use the electronic information about their time and attendance that came into our possession solely by their voluntary use of an automated system beyond the purposes provided for and contemplated by Article 4, Section 3 of the Collective Bargaining Agreement.

_____
(Respondent/Activity)

Date: _____ By:_____
(Signature and Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director for the Federal Labor Relations Authority, whose address is: Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Suite 472, Boston, MA 02222, and whose telephone number is: 617-565-5100

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by ELI NASH, Chief Administrative Law Judge, in Case No. WA-CA-04-0061, were sent to the following parties:

_____

CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

Gerard M. Greene **7000 1670 0000 1175 6001**
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DATED: June 22, 2005
Washington, DC