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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 12 Respondent	
and U.S. DEPARTMENT OF LABOR Charging Party	Case No. WA-CO-02-0614

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 **JANUARY 31, 2005**, and addressed to:

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

_____
RICHARD A. PEARSON
Administrative Law Judge

Dated: December 28, 2004
Washington, DC

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

MEMORANDUM DATE: December 28, 2004

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 12

Respondent

Case No. WA-CO-02-0614

U.S. DEPARTMENT OF LABOR

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 transcripts, exhibits and any briefs filed by the parties.

Enclosures

OALJ 05-12

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
Washington, D.C.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 12 Respondent	
and U.S. DEPARTMENT OF LABOR Charging Party	Case No. WA-CO-02-0614

Gerard M. Greene
For the General Counsel

Robert E. Paul
Larry Drake
For the Respondent

James V. Blair
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. §§ 7101-7135 (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (the Authority), 5 C.F.R. Chapter XIV, Part 2423.

Based on an unfair labor practice charge filed by the U.S. Department of Labor (Agency or Charging Party), the Acting Regional Director of the Authority's Washington Regional Office issued a Complaint and Notice of Hearing on September 30, 2002, alleging that the American Federation of Government Employees, Local 12 (Union or Respondent) violated section 7116(b)(5) of the Statute by refusing to negotiate with the Agency over a new collective bargaining agreement. On October 24, 2002, the Respondent filed its Answer, admitting most of the factual allegations of the Complaint but denying that its refusal to negotiate constituted an unfair labor practice.

A hearing was held in Washington, D.C., on March 11, 2003, at which all parties were present and afforded the

opportunity to be heard, to introduce evidence, and to examine and cross-examine witnesses. The Authority's General Counsel, the Respondent, and the Charging Party 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 Respondent, a labor organization within the meaning of 5 U.S.C. § 7103(a)(4), is the exclusive representative of a unit of employees consisting of the Agency's employees in the Washington, D.C. metropolitan area. The Charging Party, an agency within the meaning of 5 U.S.C. § 7103(a)(3), and the Respondent are parties to a collective bargaining agreement (CBA) covering all employees in the unit. The CBA (Joint Exhibit 1) became effective on March 15, 1992, and it has remained in effect since that date. Neither party sought to renegotiate the CBA until January of 2002,[1] when the Agency sent the Union written notice of its decision to do so. The Union subsequently refused to bargain, contending that the Agency had failed to conduct ground rules negotiations in a timely manner, thus waiving its right to bargain and causing the CBA to "roll over" for another year. The issue before me is whether the Union's refusal was an unfair labor practice.

The first two sections of Article 47 of the CBA provide as follows:

> **Duration**
>
> **Section 1. Effective Date**
> This Agreement shall become effective on March 15, 1992.
>
> **Section 2. Duration**
> This Agreement shall remain in full force and effect for three (3) years and from year to year thereafter, unless either party gives to the other written notice of intention to terminate or reopen. Either party may give notice to the other not more than ninety (90) nor less than sixty (60) calendar days prior to the expiration date of this Agreement of its desire to renegotiate or amend

[1] Unless otherwise noted, all dates are in 2002.

this Agreement. The ground rules which will govern negotiations of the new Agreement, including the procedure to be followed in any negotiation impasse, are detailed in Appendix A of this Agreement. This Agreement shall remain in full force and effect during negotiations and until a new contract takes effect.

Appendix A of the CBA, cited in Article 47 above, begins as follows:

Ground Rules

Section 1. General
These ground rules are to govern the conduct of negotiations for a new Collective Bargaining Agreement between the Department and Local 12, AFGE, and shall become effective on the date either party serves written notice to the other party to amend this Agreement in accordance with Article 47, Section 2 of this Agreement.

Section 2. Rules
a. The parties shall meet within ten (10) workdays of a reopening of this Agreement for the purpose of negotiating ground rules for the conduct of term negotiations. Such negotiations over ground rules shall continue for five (5) consecutive workdays. If no agreement is reached, the issues in dispute shall be submitted to the Federal Service Impasses Panel.

b. Term negotiations shall begin as soon as practical after completing negotiations of the ground rules.

Section 2 continues by listing several additional procedures concerning the conduct of both substantive and ground rule negotiations.

In the negotiations that produced the 1992 CBA, the parties' negotiators prepared and agreed upon a "joint bargaining history" on certain articles of the 1992 agreement. The parties stipulated at the hearing that no such joint bargaining history was prepared for Article 47 and Appendix A (Tr. 52).

On January 11, 2002, the Agency sent a letter to Russ Binion, the Union President (Joint Exhibit 2). The full text of the letter stated:

> Pursuant to Article 47, Section 2 of the Collective Bargaining Agreement (Agreement) between AFGE, Local 12 (Union) and the U.S. Department of Labor (Department), the Department hereby serves written notice to the Union of the Department's decision to reopen and renegotiate the Agreement. The current Agreement went into effect on March 15, 1992. As a result, it is time for the parties to revisit and amend the Agreement accordingly.
>
> The "ground rules" that govern the conduct of negotiations are stipulated in Appendix A of the current Agreement. The Department will contact the Union shortly to discuss next steps and the timing and location of contract negotiations.

The Union admitted in its Answer, at the hearing, and in its post-hearing brief, that the Agency's January 11 letter was timely sent and received within the 30-day "window" period for reopening the CBA, as required by Article 47.

The Union did not directly respond to the Agency's January 11 letter, and the Agency did not contact the Union to schedule ground rule negotiations until February 5.[2] On that date Sandra Keppley, who was then Supervisor of Operations in the Agency's Office of Employee and Labor Management Relations, phoned Larry Drake, who at that time was the Union's Executive Vice President. Ms. Keppley told Mr. Drake that the Agency was prepared to begin negotiating the ground rules as well as the substantive term agreement. She also indicated that she was aware the Union was in the middle of elections for a new slate of Union officers, and that the Agency was willing to defer negotiations until after those elections or to begin the negotiations immediately, if the Union preferred. Drake said he would relay the information to Union President Binion. Keppley followed up with a letter to Drake (G.C. Exhibit 2), asking

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[2] Salwa El-Bassioni, who was then Secretary of the Union, testified that she met with Keppley on a dues deduction matter sometime in January. In passing, Keppley stated that they would resolve these dues deduction problems when the new contract was negotiated. El-Bassioni testified that she then told Keppley that the parties had to negotiate ground rules within ten days of the Agency's reopening letter (Tr. 168-69). Keppley testified that she could not recall any such conversation (Tr. 47-48). I find it unnecessary to resolve this factual dispute, as it is immaterial to the issue before me.

whether the Union wished to proceed immediately with negotiations or wait until after their internal elections.

In a letter dated February 19, the Union acknowledged receipt of the Agency's notice seeking renegotiation of the CBA (G.C. Exhibit 4). Citing the requirement in Appendix A that the parties meet within ten days of reopening to negotiate ground rules, the Union concluded: "Failure of the Agency to comply with these express provisions foreclosed its right to bargain pursuant to the January 11 notice to renegotiate. Consequently, on February 5, 2002, the CBA was rolled over until March 15, 2003." The Agency disputed the Union's assertions and sought to persuade the Union to begin negotiations, with no success. After Mr. Drake took over as the newly elected Union President, he too refused to renegotiate the CBA. It was not until December of 2002, when a new window period for reopening the CBA occurred and the Agency sent a new letter demanding the renegotiation of the agreement, that the Union finally began ground rule and contract negotiations with the Agency.

DISCUSSION AND CONCLUSIONS

Issues and Positions of the Parties

The General Counsel asserts that after the Agency submitted a timely notice of reopening in January, the Union was obligated to negotiate a new contract with the Agency; its refusal to negotiate violated section 7116(b)(5) of the Statute. Because the Union justifies its conduct by an interpretation of the CBA, I am required by *Internal Revenue Service, Washington, D.C.*, 47 FLRA 1091, 1103-1111 (1993) (*IRS*), to determine the meaning of the disputed provisions. The General Counsel argues that the Union's admitted actions constitute a prima facie violation of its duty to bargain; therefore, the burden shifts to the Union to establish by a preponderance of the evidence that the CBA permitted it to refuse to negotiate. *See, IRS*, 47 FLRA at 1110.

The Union argues that under Article 47 and Appendix A of the CBA, the timely completion of ground rule negotiations was a "condition precedent" to substantive contract negotiations, just as the timely filing of a reopening notice is a condition precedent to bargaining. Because the Agency here was the party seeking to reopen the agreement, it had the obligation to ensure that ground rule negotiations begin within the ten-day limit set by Appendix A, according to the Union.

Respondent offers several reasons for this argument. First, it argues that "common sense" and the "basic dynamics of labor relations negotiations" dictate that the party desiring to negotiate should bear the burden of keeping the process moving in a timely manner. It further points to the language of the CBA itself, particularly the fact that Article 47 refers to the Appendix A ground rules immediately after establishing the window period for reopening the contract. In the Union's view, the ten-day deadline for ground rule negotiations thus has an equivalent status as the deadline for reopening or terminating the contract itself, and the consequences for failure should be equivalent.

The Union also points to the parties' practice in mid-term bargaining under Article 36 of the CBA. Pursuant to Section 2 of that article, the parties have agreed to meet quarterly to discuss "all items that either party wishes to negotiate and has so notified the other party at least thirty (30) calendar days prior to the scheduled start of negotiations." At the hearing, the parties stipulated[3] that pursuant to this rule, both the Union and the Agency had on occasion refused to negotiate on an item that the other party had tried to place on the agenda with less than 30 days notice. In the Union's view, this precedent is equally applicable to the Agency's failure to complete ground rule negotiations within ten days of reopening the CBA.

Finally,[4] the Union argues that when the Agency sent its notice reopening the agreement, it promised to "contact the Union shortly" to begin ground rule discussions. Thus the Agency recognized its obligation to comply with the

[3] This stipulation was mentioned but not read into the record at the hearing (Tr. 52). After the hearing, I granted the Union's motion to admit the stipulation into the record, noting also that the General Counsel has not stipulated to the admissibility or relevance of the assertions made in the stipulation.

[4] The Respondent also sought to bolster its case by offering evidence of the Agency's conduct in December to again reopen the agreement. After the Union had refused to bargain for a full year, the Agency sent another reopening notice in December 2002, and the Agency simultaneously proposed a date for ground rule negotiations to begin. In the Union's view, the Agency's conduct in December constituted a recognition that it had acted improperly in January. I rejected the Union's theory on this point, and therefore I did not permit the Union to offer the December letter into evidence or to elicit testimony on this matter.

ground rules in a timely manner. When the Agency subsequently violated that obligation, it waived its right to proceed with substantive negotiations.

Both the G.C. and the Agency dispute the Union's interpretation of Article 47 and Appendix A of the CBA. Looking first at the language of the agreement itself, they argue that the CBA requires only one act to stop the agreement from automatically renewing: a timely notice of intent to terminate or reopen. While the ground rules appendix is referred to in Article 47, the language in Article 47 relating to the "duration" of the CBA offers the parties only one way of preventing the renewal of the agreement, and that is by written termination notice. Thus the G.C. asserts that the Union's attempt to add a second "condition precedent" is refuted by the contractual language.

Looking at Appendix A, the G.C. and Agency note that while ground rule negotiations are to occur within ten days of the reopening notice, the rule is directed to "the parties," not to either party in particular. Moreover, the rule does not specify a particular consequence or penalty for late negotiations. There is nothing in the language of the agreement to support the penalty offered by the Union, and thus the Union cannot offer this as an excuse for refusing to bargain. The G.C. further cites Authority precedent that ground rule negotiations are not qualitatively different from substantive term negotiations, and that they may not be used to impede the bargaining process, as the Union has sought to do here. *See, e.g. Veterans Administration, Washington, D.C.*, 22 FLRA 612, 633-34 (1986).

The Agency also disputes the Union's references to the parties' mid-term bargaining history. The Agency agrees that Article 36 permits either party to refuse to negotiate concerning items submitted untimely for the quarterly mid-term agenda, but it analogizes this time requirement to Article 47's requirement of a timely notice to reopen the CBA. Like Article 47, Article 36, Section 2b places the notice requirement on one party, not both, and when one party submits an untimely notice, the other party is entitled to refuse to bargain. On the other hand, the requirement in Appendix A to conduct ground rule negotiations within a certain time frame is imposed on both parties, just as Article 36, Section 2b requires "the parties" to meet at least five days before the start of mid-term negotiations to finalize the agenda. If the Union had offered evidence that one party had successfully refused to conduct mid-term negotiations because the agenda was not finalized five days in advance, such evidence might have

supported the Union's interpretation of Appendix A and Article 47. The absence of such evidence demonstrates that bargaining history is of no use to the Union.

Finally, the Union argues that this case is now moot. Because the parties resumed substantive negotiations on a new CBA in December 2002, the Union asserts that any decision by the FLRA now will have no practical effect. The G.C. argues, however, that the case is not moot. It continues to seek a cease-and-desist order, to prevent the Union from repeating its conduct or similar actions in the future, as well as the posting of a notice, to inform Union members and other employees of the unlawfulness of the Respondent's conduct.

Analysis

While the Respondent does not explicitly say so, it has essentially conceded that the General Counsel has established a prima facie violation of section 7116(b)(5) of the Statute. The Respondent admits that the Agency submitted a timely written notice of its intent to terminate the CBA, and it admits that it refused to bargain for a full year after receiving that notice. Its only defense to this refusal is its contention that the Agency's inaction on ground rule negotiations caused the CBA to be renewed. Unless the Union can demonstrate that its interpretation of the CBA is correct, it committed an unfair labor practice.

In its *IRS* decision, the Authority held:

> [W]hen a respondent claims as a defense to an alleged unfair labor practice that a specific provision of the parties' collective bargaining agreement permitted its actions alleged to constitute an unfair labor practice, the Authority, including its administrative law judges, will determine the meaning of the parties' collective bargaining agreement and will resolve the unfair labor practice complaint accordingly.

47 FLRA at 1103. The Authority also stated:

> [O]nce the General Counsel makes a prima facie showing that a respondent's actions would constitute a violation of a statutory right, the respondent may rebut the General Counsel's showing . . . by establishing by a preponderance of the evidence that the parties' collective bargaining agreement allowed the respondent's actions.

47 FLRA at 1110.

The General Counsel and the Agency have also admitted a key contention of the Union: after sending its January 11 reopening notice, the Agency did not contact the Union again until February 5, and as a result, the parties did not hold any meetings to negotiate ground rules as required in Appendix A, Section 2a.[5]

Thus the opposing parties have conceded the key factual contentions of their opponent, and the central issue of interpreting the CBA can be framed this way: in order to terminate or reopen the CBA,[6] did the Agency have to take

[5] While there was considerable testimony and dispute as to how the Union calculated the time that the Agency had to comply with the ground rule requirement, I consider the point to be irrelevant. No matter how Section 2a of the Ground Rules is interpreted and applied, the parties did not meet within the time specified. And as I stated in footnote 2, it is irrelevant whether the Union "reminded" the Agency of the ground rule provision, as Ms. El-Bassioni testified. If the CBA requires something within a specified time, parties are not required to remind each other of the impending deadline.

[6] Although the terms reopen and terminate are not necessarily the same, there is no practical difference between them here, and I will use the words interchangeably.

any steps other than submit a timely written notice? The Agency and the G.C. say "no," the CBA imposes only the notice requirement in order to terminate the contract; the Union says "yes," the CBA establishes a series of ground rules governing new contract negotiations, and the failure to comply with any of these ground rules will result in the automatic renewal of the CBA for another year.[7]

Using the standards and principles for interpreting collective bargaining agreements applied by arbitrators and the Federal courts, in addition to FLRA case law, I conclude that the CBA requires only one action to terminate the agreement, and the Agency performed it on January 11. From that date on, the Union was obligated to bargain on demand. Any violations of the Ground Rules Appendix could not reinstate or renew the already-terminated CBA or justify a complete refusal to negotiate a new agreement. The arguments offered by the Union for making compliance with the ground rules a prerequisite to contract termination simply do not withstand scrutiny.

The first place to look, and really the only place that is necessary here, is the language of the CBA itself. Article 47 is titled "Duration," and that is what its provisions (most specifically Section 2) relate to. The crucial portion of Section 2 indicates that it will remain in effect "unless either party gives to the other written notice of intention to terminate or reopen." This language conveys two important points. First, and most importantly, it provides one and only one way to prevent the automatic renewal of the agreement: by giving written notice of intention to terminate or reopen. The Union has admitted that the Agency provided such notice and that it was timely, and in so doing it has effectively admitted that the CBA was terminated. This conclusion is consistent with general FLRA and private sector labor law, which recognizes that when a party to a CBA provides appropriate, timely notice, "all matters would be reopened and subject to renegotiation." *American Federation of Government Employees, AFL-CIO, Local 1931 and Department of the Navy, Naval Weapons Station, Concord, California*, 32 FLRA 1023, 1071 (1988).

Secondly, the above-cited language imposes the notice requirement on a specific party: "either party" must give notice to "the other," or else the CBA remains in full force and effect. The burden of giving timely notice here is clearly on the party seeking to terminate the contract, and

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[7] To be fair, the Union does not explicitly say that "any" ground rule violation will renew the contract, but that is the unavoidable consequence of its theory.

the notice requirement is explicitly tied to the "duration" of the agreement. This language stands in contrast to the non-specific wording of Section 2a of the Ground Rules Appendix: "The parties shall meet" to negotiate additional ground rules. (Similar language is used regarding other ground rules, as well as in the second sentence of Article 36 (Mid-Term Bargaining), Section 2b.) Here, the burden is not on one party in particular, but on both parties mutually. In further contrast to Article 47, the time limits in the ground rules convey no particular penalty or consequence for violation.

The Union is correct in noting that Article 47, Section 2 does expressly refer to the ground rules in Appendix A "which will govern negotiations of the new Agreement," but this doesn't mean that the CBA is renewed if the ground rules are not followed. Such a meaning might be logical if Article 47 read, "This Agreement shall remain in full force and effect . . . unless either party gives to the other written notice of intention to terminate or reopen, or if any of the time limits of Appendix A are not met." Whereas the requirement of timely notice is directly tied to the termination of the CBA, the Ground Rules Appendix is tied to the "negotiations of the new Agreement". The ground rules only come into play after the CBA has been terminated and reopened; they do not negate an action that has already occurred.

The Authority has only infrequently discussed the operation of collective bargaining agreements containing automatic-renewal provisions. Its discussion of such provisions in *Kansas Army National Guard, Topeka, Kansas*, 47 FLRA 937, 940-44 (1993) (*National Guard*), a representation case, is particularly revealing, even though some of the specific issues in that case are inapplicable to unfair labor practice cases such as ours. In that case, neither the agency nor the incumbent union sought to reopen their CBA within the contractual window period, and the agreement was never submitted to the agency head for review. Under section 7114(c) of the Statute, a negotiated agreement is subject to review (for approval or disapproval) by the head of the agency within 30 days after it is executed. An intervening union argued that because the agency head had not reviewed the agreement upon its automatic renewal, there was no valid agreement in effect, and the union's election petition was not barred by the CBA.

The Authority observed in *National Guard* that the automatic renewal of CBAs was a common practice in both private sector and Federal labor relations; that "[t]he availability of automatic renewal of agreements contributes

to the stability of employer-employee relations"; and that "section 7114(c) should be interpreted in a manner that is compatible with, and permits, automatic renewal of agreements." 47 FLRA at 941-42. The Authority cited earlier decisions for the principle that automatically renewed CBAs are subject to agency head review, just like newly negotiated agreements, and it held that for both types of CBAs, "the execution date is . . . *the point at which the time limits for making a request to renegotiate the agreement expired with no timely request forthcoming*." 47 FLRA at 943 (emphasis added).

While the context and the legal issues in the *National Guard* case are quite different from the current case, the earlier decision demonstrates that the Authority considers the automatic renewal of CBAs to be an important stabilizing factor in labor relations. The Authority sought to apply section 7114(c) in harmony with automatic renewal provisions, so that the renewed agreement would have the same anniversary or effective date as the original agreement, in order to promote stability and predictability. *Id.* at 942-43. The decision illustrates that the establishment of a specific, and predictable, cutoff date for the renewal or termination of the agreement has implications on issues as diverse as the period for agency head review and for petitions by challenging unions.

This is important in the current case, because the Respondent's proposed interpretation of the CBA would inject a considerable degree of uncertainty into the calculation of when the CBA is renewed. Following the Respondent's reasoning, the parties have a window period 60 to 90 days before March 15 each year to terminate the agreement, but even if one party files a termination notice within that period, subsequent action or inaction by the parties could negate the termination and result in the renewal of the CBA, which would then trigger the 30-day period for agency head review and foreclose decertification petitions. Neither the parties to the CBA nor a potential intervening party would know with any predictability "the date on which no further action is necessary to finalize a complete agreement." *National Guard* at 943. The plain language of Article 47 provides all parties with a simple, predictable date (the 60th day before March 15), on which the CBA is renewed. After this date, if neither party has reopened the agreement, the parties need not prepare for negotiations; the agreement can be sent to the agency head for review, and opposing unions can no longer file election petitions. Thus the Union's proposed interpretation of the agreement conflicts not only with its plain meaning, but also with

fundamental principles of stability and predictability in labor relations.

The Union's attempts to bolster its position by reference to other portions of the CBA or the parties' past practice do not help its case. As I noted above, Article 36 of the CBA sets forth a framework for mid-term negotiations on a quarterly basis, which parallels the framework for term negotiations in Article 47 and Appendix A. Section 2b of Article 36 allows either party to place any subject on the bargaining agenda, so long as it notifies the other party at least 30 days in advance. This requirement is similar to the window period for submitting a termination notice in Article 47. Article 36, Section 2b further provides that "[t]he parties will meet at least five (5) workdays prior to the start of negotiations to finalize the agenda and clarify the issues and interests." This parallels the provision in Appendix A, Section 2a requiring "the parties" to "meet" within a specified time to negotiate ground rules. If the Union had offered evidence that the parties had in the past refused to conduct substantive mid-term negotiations when they had failed to conduct a "clarifying" meeting at least five days in advance, I would consider that to be probative evidence of the Union's interpretation of Article 47. But the past practice stipulated by the parties relates to the requirement of placing an item on the mid-term agenda 30 days in advance, not to the requirement of holding a preliminary meeting. Indeed, a strict application of the deadline for placing items on the mid-term agenda is consistent with strict enforcement of the window period for requiring a CBA termination notice, but it does not logically follow that a violation of the ground rules should result in cancellation of the substantive negotiations. Logic would suggest exactly the opposite.

It is also important to understand here that ground rule negotiations are not inherently different or separate from substantive negotiations. *See, Department of Defense Dependents Schools*, 14 FLRA 191, 193 (1984); *Veterans Administration, Washington, D.C.*, 22 FLRA 612, 633-34 (1986). Ground rule negotiations serve a useful purpose, but they are part and parcel of the process of bargaining with a good faith resolve to reach an agreement, a process in which <u>both</u> parties have a <u>mutual</u> obligation. There is no valid reason for one party's violation of a particular ground rule to negate the other party's entire obligation to bargain, yet this is the import of the Respondent's argument here. Such reasoning is antithetical to the duty to bargain in good faith underlying section 7114(b) of the Statute, and it violates the principle that ground rules should be designed to further, not impede, the bargaining process.

U.S. Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 36 FLRA 524, 533 (1990).

None of the Union's other arguments justify its conduct. For instance, it argues that while the Agency's termination notice constituted a notice of its "intention" to negotiate a new contract, it wasn't enough, by itself, to trigger a duty to bargain. While this statement is true, it proves nothing useful to the Union. The Agency's January 11 notice was not, by itself, a demand to bargain, but it did terminate the CBA and prevent the CBA from automatically renewing. Subsequently, the Agency made several explicit demands to bargain on the Union, and the Union invariably refused them. The Union also argues that the Agency undertook an additional obligation to initiate ground rule negotiations by stating in its January 11 letter that it "will contact the Union shortly to discuss next steps". This constituted no specific obligation of the Agency, outside of its underlying contractual responsibilities, however. Clearly, the Agency understood that ground rule negotiations would need to be started, but it did not promise to do anything different from what the CBA already required. Finally, the Union sought to use the Agency's December 2002 reopening notice (Respondent's Exhibit 1 for Identification, Rejected Exhibit File) to support the Union's interpretation of the CBA. In the Union's view, the Agency's attempt in December 2002 to schedule ground rule negotiations within ten days of its contract termination notice represented a tacit admission that the Agency had acted improperly a year earlier. I rejected the exhibit as immaterial to the issues of this case, but even if I had considered that exhibit and the witnesses' testimony surrounding the events of December 2002, I would not consider it persuasive in the least. While events occurring after an alleged unfair labor practice complaint may be considered if they "'cast light' on events encompassed in a complaint", the Respondent's proffered evidence does not undermine the Agency's interpretation of the CBA or its conduct in January 2002. *U.S. Department of Justice, Office of Justice Programs*, 50 FLRA 472, 477 n.8 (1995).

For all of these reasons, I conclude that the Union has not shown, by a preponderance of the evidence, that the failure to hold ground rule negotiations within ten work days of the Agency's termination notice resulted in the automatic renewal of the CBA. On the contrary, the intrinsic language of the CBA, established principles of contract interpretation, and fundamental principles of labor relations continuity, all support the Agency's position that the CBA was effectively terminated and reopened for

negotiation on January 11, 2002. The Union repeatedly rejected the Agency's subsequent demands to bargain, and this constituted a prima facie violation of sections 7114(b) and 7116(b)(5) of the Statute. Because the Union has failed to rebut the prima facie case by demonstrating that the CBA justified its refusal to bargain, I conclude that it committed an unfair labor practice by its conduct.

I also reject the Union's argument that the case is moot. In *Social Security Administration, Office of Hearings and Appeals, Charleston, South Carolina*, 59 FLRA 646, 648-49 (2004)(*SSA*), in finding that case not to be moot, the Authority cited precedent that a dispute is moot "when the p arties no longer have a legally cognizable interest in the o utcome." *Id., citing United States Small Business Administration*, 55 FLRA 179, 183 (1999). The burden of demonstrating mootness "is a heavy one." 55 FLRA at 183. If a cease and desist order or the posting of a notice remain feasible as remedies, or if there is any reasonable expectation that the alleged violation may recur, the Authority and the courts have found cases not to be moot. *SSA*, 59 FLRA at 648*; Federal Aviation Administration*, 55 FLRA 254, 261 (1999)*; see also, County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979); *Department of Justice v. FLRA*, 991 F.2d 285, 289 (5th Cir. 1993).

In this case, although the Union began bargaining with the Agency in December 2002 or January 2003, the effects of the Union's year-long refusal to negotiate linger and the possibility of recurrence remains. The Union is still the exclusive representative of the Agency's employees and could utilize the same legal argument again in future years. It is important that the Union and its members understand that its conduct and strategy were fundamentally, legally flawed and that it cannot repeat such conduct.

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

ORDER

Pursuant to section 2423.41(c) of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the American Federation of Government Employees, Local 12 (the Union) shall:

1. Cease and desist from:

(a) Failing or refusing to negotiate in good faith with the U.S. Department of Labor, Washington, D.C. (the

Agency) by refusing to negotiate over a new collective bargaining agreement (CBA) after the Agency has given timely notice under the terms of the current CBA to reopen and renegotiate it.

(b) In any like or related manner, failing or refusing to fulfill its obligation to negotiate in good faith as required by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Upon request, negotiate in good faith with the Agency on a new collective bargaining agreement.

(b) Post at its office, at its normal meeting places, and at all other places where notices to its members and to employees of the Agency are customarily posted, 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 President of the Union 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 these Notices are not altered, defaced, or covered by other material.

(c) Submit appropriate signed copies of such Notice to the Director, Office of Employee and Labor-Management Relations, U.S. Department of Labor, Washington, D.C., for posting in conspicuous places where bargaining unit employees are located, where they shall be maintained for a period of 60 consecutive days from the date of posting.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Authority's Boston Regional Office, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, December 28, 2004.

_____

RICHARD A. PEARSON
Administrative Law Judge

NOTICE TO ALL MEMBERS AND OTHER EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

The Federal Labor Relations Authority has found that we have violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR MEMBERS AND ALL EMPLOYEES THAT:

WE WILL NOT fail or refuse to negotiate in good faith with the U.S. Department of Labor, Washington, D.C. (the Agency) by refusing to negotiate over a new collective bargaining agreement (CBA) after the Agency has given timely notice under the terms of the current CBA to reopen and renegotiate it.

WE WILL NOT, in any like or related manner, fail or refuse to fulfill our obligation to negotiate in good faith as required by the Statute.

WE WILL, upon request, negotiate in good faith with the Agency on a new collective bargaining agreement.

_____
(Union)

Dated: _____ By: _____
(Signature) President

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 questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Boston Regional Office, of the Federal Labor Relations Authority, whose address is: 99 Summer Street, Suite 1500, Boston, MA 02110-1200, and whose telephone number is: 617-424-5731.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. WA-CO-02-0614, were sent to the following parties:

_____

CERTIFIED MAIL AND RETURN RECEIPT **CERTIFIED NOS:**

Gerard M. Greene **7000 1670 0000 1175 4885**
Counsel for the General Counsel
Federal Labor Relations Authority
99 Summer Street, Suite 1500
Boston, MA 02110-1200

Robert E. Paul and **7000 1670 0000 1175 4892**
Larry Drake
Zwerdling, Paul, Leibig, Kahn & Wolly, P.C.
1025 Connecticut Ave., NW, Suite 712
Washington, DC 20036-5420

James V. Blair **7000 1670 0000 1175 4915**
Agency Representative
Office of the Solicitor
U.S. Department of Labor
200 Constitution Ave., NW, Suite N-2428
Washington, DC 20210

REGULAR MAIL:

President
AFGE
80 F Street, NW
Washington, DC 20001

Dated: December 28, 2004

Washington, DC