MEMORANDUM DATE: October 30, 1995

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: U.S. GEOLOGICAL SURVEY,
CARIBBEAN DISTRICT OFFICE,
SAN JUAN, PUERTO RICO

Respondent

and Case Nos. BN-CA-40286
BN-CA-40645

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1503

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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

U.S. GEOLOGICAL SURVEY, CARIBBEAN DISTRICT OFFICE SAN JUAN, PUERTO RICO Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1503 Charging Party	Case Nos. BN-CA-40286 BN-CA-40645

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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **NOVEMBER 29, 1995**, and addressed to:

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

ELI NASH, JR.
Administrative Law Judge

Dated: October 30, 1995
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

U.S. GEOLOGICAL SURVEY, CARIBBEAN DISTRICT OFFICE SAN JUAN, PUERTO RICO Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1503 Charging Party	Case Nos. BN-CA-40286 BN-CA-40645

Beatrice G. Chester, Esq.
Ms. Stephanie E. Parle
For the Respondent

Richard S. Jones, Esq.
For the General Counsel

Orlando Ramos-Gines
For the Charging Party

Before: ELI NASH, JR.
Administrative Law Judge

DECISION

Statement of the Case

The American Federation of Government Employees, Local 1503 (herein the Union), filed the charge in Case No. BN-CA-40286 with the Boston Regional Director of the Federal Labor Relations Authority on December 14, 1993, against the U.S. Geological Survey, Caribbean District Office, San Juan, Puerto Rico (herein the Respondent). On July 25, 1994, the Boston Regional Director issued a Complaint and Notice of Hearing alleging that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, as amended, (herein the Statute) by relocating bargaining unit employees represented by the Union to GSA Building 651 without completing impact and implementation negotiations. Respondent filed its Answer to the Complaint

in Case No. BN-CA-40286 on September 14, 1994. On that same date, the Boston Regional Director transferred the case to the Atlanta Regional Office.

Meanwhile, on March 14, 1994, the Union filed a charge in Case No. BN-CA-40645, with the Boston Regional Director. The latter Complaint contained additional allegations of unlawful conduct concerning negotiation for a collective bargaining agreement, supplementing the allegations in the initial Complaint, by alleging that collectively the Respondent's conduct prevented the parties from completing negotiations for a new collective bargaining agreement prior to expiration of the one-year period following the Union's certification, as exclusive representative. The Atlanta Regional Director issued a Consolidated Complaint and Notice of Hearing in the two cases on October 12, 1994.

A hearing on the Consolidated Complaint was held in Hato Rey, Puerto Rico at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire record in this matter, my observation of the witnesses and their demeanor and from my evaluation of the evidence, I make the following:

Findings of Fact

The record disclosed that, after a lengthy struggle with Respondent, the Union was certified as the exclusive representative of a unit of employees appropriate for collective bargaining at Respondent's San Juan, Puerto Rico facility. Respondent took the issue of whether a unit of employees was appropriate in Puerto Rico to a hearing, attended by numerous regional and national management officials. Indicative, of Respondent's concerns is its Fiscal Year 1991 report, it noted alarm at the Union's interest in organizing:

> The American Federation of Government Employees is very actively trying to organize a union shop at the USGS. There is considerable local interest. Unless management's voices can be expressed to the District non-supervisory personnel, many employees believe that management is encouraging union membership. It is generally believed that at present, a vote would favor the union. When and if headquarters finally decides to express the management position (in English and Spanish),

there is little doubt that the union interest will wane.

Respondents' success in delaying the proceedings long enough and/or to "express its position" to employees to allow "union interest to wane" is evidenced in the closeness of the eventual election won by the Union 36-33.

The parties' relationship appears to have been adversar-ial from the very beginning. A few days after certification, on May 10, 1993, the Union's national representative, Pedro Romero, who said that, he was frustrated because his telephone calls had not been returned, faxed Respondent a copy of the certification, together with a cover letter and requested bargaining over a change in working hours. Respondent quickly answered, assuring the Union that no change had occurred. Several months later, however, at least one supervisor, Felipe Hernandez, apparently was persisting with the change about which the request to bargain was made, thereby prompting another inquiry/bargaining request from the Union.

While Respondent did not formally notify the Union of its planned office relocation, the plan was common knowledge at the San Juan facility and employees knew that a move was going to take place at some unspecified time in the future. Clearly a move was contemplated, since Respondent mentioned its need for additional space to the General Services Administration (herein called GSA) as early as 1987, and reiterated its concerns by letter of September 6, 1991. Further, it is clear from the record that communications concerning a proposed relocation between Respondent and GSA were exchanged throughout 1992. On June 2, 1993, shortly after certification and prior to the initial labor-management meeting between the parties, the Union made it clear to Respondent, in writing, that it intended to negotiate concerning the new office facilities. To assist it, the Union requested a copy of floor plans, parking lots and the projected date of the move.

During the parties first labor-management meeting on June 10, 1993, Respondent announced its intention to exclude more employees from the bargaining unit. Romero inquired why Respondent had not raised this issue during the protracted hearings leading up to the election. Stephanie Parle, Respondent's Labor Relations representative, in response to that question, asserted that there had been some "confusion" among management about the issue.

At the June 10, 1993 meeting, the parties reached agreement concerning a dues deduction arrangement and, also one of Respondent's representatives, Pedro Diaz, displayed

floor plans for proposed new office space.[1] Romero, specifically raised the issue of space for a Union office. Diaz pointed out on the floor plan that the Union office could be one of the office spaces near the labs and pointed out two sites on the floor plans. Union representatives, based on what was transpiring at the meeting, formed the impression that Respondent was going to provide the Union with office space. Union President Orlando Ramos, however, candidly admitted that Respondent did not specifically agree, at that time, to provide the Union with an office.

Going into the June 10, 1993 meeting, the idea seemed to be that negotiations over Respondent's proposed relocation would commence within a couple of weeks. An announcement by, Respondent at the June 10, 1993 meeting, changed all that. That announcement was, Respondent planned to terminate five temporary employees. Understandably, the Union was concerned about the lives and careers of these employees; therefore, the proposed terminations dominated the remainder of the meeting. Ultimately, Respondent fired ten additional employees and justified its action because it needed to shield itself against discrimination charges. In U.S. Geological Survey, 50 FLRA No. 76 (1995), the Authority found that the terminations of the ten were discriminatory and ordered all ten reinstated with back pay.

The sudden termination of 15 employees created significant staffing shortages and placed increased workloads on the remaining employees. Thus, on June 29, 1993, the Union requested negotiations concerning the work reassignments and, it also submitted ground rules. Respondent proceeded to make the work reassignments on July 8, 1993. The parties then engaged in post implementation bargaining with the assistance of mediator Irwin Gerard. On July 22, 1993, the Union submitted its initial proposals. Several negotiating sessions throughout July-October 1993 followed, which were finally completed on October 18, 1993.

Throughout this period, the implementation date for Respondent's relocation remained in the distant, and uncertain, future. It is easy to see how the terminations of the temporary employees, and the immediate reassignments of duties to the remaining employees, would take precedence over relocation negotiations, for a move that no one at that point was certain when it would take place. The terminations notwithstanding, the Union continued to pursue

[1] It appears that the Union was told at the June 10, 1993 meeting that the move could take place as late as April 1994.

the relocation issue by requesting additional information. On August 11, 1993, Ramos wrote Respondent's District Chief, Allen Zack, and informed him that Romero had designated him to participate "in all Safety and Health inspections, meetings, or other related activities regarding the present and new office spaces." Ramos also requested "information on how employees will be distributed in the new office space." When Ramos did not hear from Respondent by the requested date of August 17, 1993, he followed up with another letter on September 1, 1993. On September 7, 1993, Respondent, by Supervisory Hydrologist Maria Irizarry, who is also Respondent's labor relations liaison for the Caribbean District, sent Romero a reply to Ramos' letters. Irizarry requested written confirmation of Ramos' representational status and promised to "make every effort to comply with [the information] requests as soon as we can obtain the information requested." Seemingly, Respondent still had no idea or proposal with respect to assigning employees locations in the proposed new office space. Thus, it was not until October 5, 1993, at a negotiation session concerning the reassignments of work, that Respondent provided the Union with the requested information.

Meanwhile, the Union continued its effort to prepare for the relocation negotiations. On September 15, 1993, two Union officials met with Irizarry to discuss their proposals for Union office space. Irizarry denies that the Union was submitting proposals, but alluded to the Union's views as "an informal request." In any event, it is clear that Irizarry informed the Union that GSA was preparing a new lay out of the office space and that it would be provided to the Union when it was available. Also, according to Irizarry's Memorandum for the Record of that same date, she told the Union that Respondent still did not know an implementation date for the move, but thought that it would be between November 1 and November 15, 1993. At the same time, Union officials told Irizarry of some safety concerns it had noticed. Irizarry asked for the safety proposals as soon as possible because management needed to involve GSA in any safety issues.

The following day, September 16, 1993, in response to Irizarry's request, the Union submitted six (6) specific proposals dealing with safety and health concerns. A week later, on September 23, 1993, Irizarry responded, stating that she was referring the Union's proposals to GSA, noting that GSA had sole responsibility because the office space had not been released to Respondent. On September 27, 1993, the Union faxed a request to GSA asking to be included in all inspec-tions of the new office space. GSA never responded to this request; however, about a month later, on

October 26, 1993, GSA finally responded to the Union's safety and health proposals, when it faxed a reply to Respondent, dated October 22, 1993. Although GSA gave answers for some of the items, it essentially washed its hands of any obligation to bargain with the Union, stating that the "specifications and contract documents were developed according to [Respondent's] initial recommendations." Thus, Respondent pushed the Union's proposals off on GSA, and GSA, in turn, pushed them off on Respondent. Given the exchanges among the three, one might surmise that, the Union was being given an old-fashioned "run-around."

In the meantime, on October 13, 1993, shortly after receiving Respondent's proposed space assignments, the Union transmitted ground rules proposals for the relocation negotiation. Respondent had some disagreements with the ground rules proposals; on October 18, 1993 (at the meeting where final agreement on the reassignment issue was reached), the parties discussed the ground rules. On October 19, 1993, the Union clarified in writing its ground rules proposals and proposed that the parties meet on October 26, 1993, and begin substantive negotiations the following day. Respondent replied on October 25, 1993, the day before the scheduled first meeting. In that reply, Irizarry gave the Union a scheduled implementation date of November 15, 1993. She also acknowledged that Respondent had not provided the Union with its proposed seating plan until October 5, 1993. Irizarry agreed to negotiate the issue of Union office space, but suggested that the Union "review Federal Service Impasses Panel decisions related to requests for union office space before we negotiate." What is more important, Irizarry refused in advance to negotiate over a plainly negotiable Union ground rule proposal concerning agency head approval, stating that "we have not and will not agree." Although Irizarry was an experienced labor-management negotiator, she intimated that she was "not aware of any FLRA case law which gives unions a right to reopen a section or the entire MOU if an agency disapproves

a portion of a MOU" and demanded that the Union research the issue for her.[2]

The parties met on October 26, 1993, and signed a ground rules agreement for relocation negotiations. Also, at that time, the Union submitted substantive bargaining proposals. Respondent submitted counter-proposals on October 28, 1993. Thereafter, the parties engaged in negotiations with the assistance of a Federal mediator. Ultimately, the parties reached agreement on all issues except availability of office space and facilities for the Union and shower facilities for employees. At no point during this period did any of Respondent's representatives even suggest to the Union that it had no duty to negotiate concerning those issues. Respondent did make it clear, however, that it intended to implement the relocation whether or not negotiations were completed. Respondent never gave any reason other than that GSA was "forcing" them to move. The record evidence plainly shows that, Respondent initiated the move, and literally spent years trying to get GSA to approve Respondent's plans. In this regard, the Union, on November 9, 1993, requested, under section 7114(b)(4) of the Statute, copies of any correspondence between Respondent and GSA.[3] Respondent failed to reply prior to the parties' meeting of November 12, 1993, where it

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The Union's proposal appears to be consistent with the Authority's finding in Department of the Interior, National Park Service, Colonial National Historical Park, Yorktown, Virginia, 20 FLRA 537 (1985): "by the plain language of section 7114(c) of the Statute, 'the agreement,' not a portion thereof, must be approved by the agency head." 20 FLRA at 541. Unless the parties agree otherwise, as Irizarry was insisting as a precondition to any further negotiations, an agency is under no obligation to implement provisions not specifically disapproved; rather, the agency has the duty "to return to the bargaining table with a sincere resolve to reach agreement with the Union." Id. This is a perfectly sensible policy; for example, the Union may have given up other important concerns as a quid pro quo for a provision ultimately disapproved by the agency head. Thus, the Authority recognized that often, in order to effectively renegotiate a disapproved provision, the entire contract will have to be back on the table.

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Documents exchanged between an agency and GSA concerning an impending office relocation would appear to the undersigned to be both necessary and relevant to collective bargaining. See U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 41 FLRA 339 (1991).

announced that implementation would proceed as scheduled. There is no evidence showing that the Union agreed that Respondent could legally make the move prior to completion of bargaining. It does reveal that under protest, the Union announced in writing on November 12, 1993, that it would commence post implementation bargaining on November 16, 1993.

At the beginning of post implementation bargaining, Respondent still had not provided the Union with any correspondence between it and GSA concerning the necessity of, or any aspect of, the move. Therefore, the Union, by letter of November 17, 1993, renewed its request. Although Respondent provided no information in response to this request, it did offer two pieces of correspondence, dated October 28, 1993 and October 29, 1993, as evidence purporting to show that it had sought to delay the move, but GSA would not allow any delay. Irizarry's testimony on this point was vague, but she implied that at the time of the Union's request, Respondent may not have been able to find the documents in their files. Consequently, she conceded that the Union had not seen the documents until the hearing in the case. Moreover, GSA's reply, in my opinion, cannot be read to mean that Respondent was prohibited from delaying its move, but rather, its Director, Michael J. Costic, simply urged Respondent to "reconsider" its request to delay the move. In this regard, the "most serious consequence" to Respondent would be potential liability to pay $19,534.00 in additional monthly rent. The record is also barren of any evidence suggesting that the mission of the agency could not be performed if the move were to be delayed. Contrariwise, the record reveals that the new space was not even ready for safe occupancy. Again, the evidence shows that the contractor was still working on office walls, and telephone and electrical lines for computers had not even been completed. On November 18, 1993, the Union wrote to the Office of Occupational Safety and Health Administration (herein called OSHA) to complain about the deplorable conditions at the location.

Notwithstanding the above, the Union, in an effort to resolve the relocation issue, continued to negotiate, even after-the-fact, over the relocation. Although the parties enlisted the assistance of the mediator, they were unable to reach agreement, so the mediator declared an impasse. At this point, Respondent gave no indication that it believed it had no duty to bargain over the issues in dispute. On March 14, 1994, the Union submitted a Request for Assistance to the FSIP. On March 23, 1994, the FSIP, by its Acting Executive Director, H. Joseph Schimansky, sent out an acknowledgment to the parties.

On May 4, 1994, Respondent, wrote to Gladys Hernandez, of the FSIP and, for the first time, communicated to the Union its view, based on a D.C. Circuit Court of Appeals decision, that "there is no obligation to bargain over the granting of office space to the Union because that issue is totally unrelated to the relocation of employees." Irizarry apparently informed the FSIP orally, on April 22, 1994, of Respondent's position that there was no duty to bargain. This, however, was the first time that the Union even had a clue of Respondent's position that there was no duty to bargain. On May 12, 1994, the Union submitted its opposition to the FSIP. Its arguments that the matter was negotiable were as follows: (1) the Union was newly certified, and, from the beginning, expressed its intent to negotiate concerning "all issues" relating to the new office space (rather than a narrow impact and implementation scope of negotiations; (2) that "[b]ecause a relocation was imminent by November 1993, we decided to hold our petition of an office room in the old office facilities";[4] (3) that Respondent had all along given the Union the impression that it was going to bargain over office space, dating back to Diaz' apparent concurrence with the Union's proposal of June 10, 1993, all the way through Irizarry's written assertion on October 25, 1993, that Respondent was "prepared to listen and discuss" Union's "proposals related to a request for a union office"; and (4) that "[o]nce negotiations were initiated Management submitted counterproposals addressing the union's office issue." The Respondent's counter proposals of October 28, 1993, seems to support this view since essentially it proposed that Union

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Irizarry's view seems to be that a union would first be required to establish an office in an old facility before the agency has any duty to entertain proposals for Union office space at a facility to which it is relocating. After it is clear that a relocation will take place, it seems to me that negotiating for an office in the existing facility, only to have to turn around and negotiate for new union office space at a new location makes little sense. At the very least, this could not be an effective use of bargaining time and would therefore be, if nothing else, inefficient. When responding to a hypothetical question as to whether Respondent would have even negotiated over Union office space in the old facility, Irizarry would not say, testifying only that she had not thought about it. The lack of thought on her part is baffling inasmuch as the Union's failure to procure an office space in the old location is the centerpiece of Respondent's defense with respect to the charge in BN-CA-40286.

representatives be allowed to use government equipment in their own private offices for representational purposes.

On June 8, 1994, the FSIP declined jurisdiction because of Respondent's assertions that it had no obligation to bargain over Union office space or shower facilities because such amenities were not available in the old facility. In this regard, the FSIP noted particularly the pending unfair labor practice charge in Case No. BN-CA-40286, and asserted that the duty to bargain must be first determined before it would entertain another request for assistance.

After the mediator declared an impasse in the relocation negotiations, the Union directed its efforts toward negotiating an initial collective bargaining agreement between the parties. On February 25, 1994, it submitted ground rules proposals, as well as extensive proposals for a grievance and arbitration procedure. The Union requested a response by March 1, 1994, and proposed starting substantive negotiations on March 7, 1994. By letter of March 1, 1994, the Union followed up in writing, protesting Irizarry's oral statements that it would not negotiate a grievance/arbitration procedure because it was "not convenient to negotiate the contract by parts." The Union continued by clarifying that it intended to negotiate a full contract, but here it was simply trying to submit preliminary proposals for a grievance/arbitration procedure which is required by Statute.

A week later, on March 8, 1994, Irizarry responded by refusing to even begin ground rules negotiations until at least March 23, 1994. She also announced, for the first time, that there would be mandatory training the week of March 15 for virtually the entire professional staff. According to the uncontradicted testimony of Ramos, however, the training was a refresher course that he had already taken, and it had never previously been mandatory for anyone. Interestingly, Irizarry provided no explanation whatsoever for Respondent's inability to commence ground rules negotiations by March 1, as initially proposed by the Union, or substantive negotiations by March 7, as also initially proposed by the Union.

The Union, given its past experiences with Respondent, believed by this point that Respondent was engaging in dilatory tactics. Therefore, it immediately prepared another letter to Irizarry, taking strong exception to her characterization of refresher training courses as "mandatory" and informing Irizarry that the Union considered her tactics to be dilatory and it would be filing an unfair labor practice charge to show Respondent how serious it was

about this matter. That same day, the Union prepared and mailed the unfair labor practice charge in Case No. BN-CA-40645, alleging a refusal to negotiate concerning the grievance and arbitration procedures.

On March 23, 1994, the parties started ground rules negotiations. Respondent continued to refuse to negotiate concerning a grievance or arbitration procedure; however, it did discuss ground rules during several bargaining sessions between March 23, 1994 and May 5, 1994, when a ground rules agreement was finally signed. The negotiations took this long it seems, because Respondent insisted on delaying for 12 weeks the Union's submission of proposals although the Union contended they were already prepared. Respondent then demanded an additional 12 weeks to prepare and submit its counter-proposals. Respondent also insisted on more time after that to revise proposals and another 15 days to notify the other party to actually start negotiations. The Union considered this to be much too lengthy a process; nevertheless, for the sake of getting an agreement, it relented and allowed Respondent 12 weeks to submit counter-proposals. It did, however, succeed in getting Respondent to at least accept the Union's proposals on May 5, 1994, the date the ground rules were signed off on, thereby subtracting 12 weeks from Respondent's proposed timetable.

Perhaps coincidentally, on Monday, May 9, 1994, the very first business day after expiration of the one year anniversary of the Union's certification, about 17 employees signed a petition to decertify the Union. There is no record evidence implicating Respondent in this effort to decertify the Union. Circumstantially, however, the employee who ultimately filed the decertification petition on July 6, 1994, Gregory S. Cherry, was not even stationed at Respondent's facility at the time the signatures were obtained. Cherry, who testified initially that he received no help with the petition, when pressed, admitted that he received some "small help." Cherry also testified that another employee, Nicasio Sepulveda (whose name appeared at the top of the list of signatures) actually organized the drive, but didn't want to actually file the petition because he was fearful of having his name on it. Cherry could not explain how the Respondent obtained the list of signatures that they had brought to the hearing nor could he explain with any specificity why he filed the petition. Sepulveda was not at the hearing, having never previously been identified as the "real" petitioner. Thus, there is no record evidence as to how Sepulveda obtained the appropriate forms, how he knew the appropriate date to obtain signatures, or even how he knew to file the petition in the FLRA Atlanta Regional Office instead of Boston, which had

been, for a long time, the office with jurisdiction over Puerto Rico.

In any case, it took Respondent little time after the filing of the decertification petition to research FLRA case law and conclude that it had no duty to negotiate any further with the Union. In a letter dated July 28, 1994, District Chief, Allen Zack stated:

> In Federal Labor Relations Authority decisions such as 48 FLRA 125 (1994), the Authority held that . . . "during the pendency of a QCR (question concerning representation), management is obligated to maintain existing conditions of employment until the QCR is resolved." Thereafter, the Authority concluded in Immigration and Naturalization Service, 16 FLRA 80 (1984), that, based on the policies set forth in INS, an agency is not obligated to bargain with an incumbent union during the pendency of a QCR because to do so would necessarily have led to changes in conditions of employment.

On August 29, 1994, the Atlanta Regional Director issued a notice to the parties that she was holding the decertifi-cation petition, Case No. AT-DR-40094, in abeyance pending resolution of Case No. BN-CA-31069, essentially because the large number of employees fired in that case, if allowed to return upon order of the Authority, could easily affect the outcome of an election in such a small bargaining unit.

Discussion and Conclusions

A. Respondent violated section 7116(a)(1) and (5) of the Statute by relocating unit employees without completing impact and implementation bargaining with the Union.

The General Counsel envisions this as a case where an agency engages in a pattern of evasive and dilatory tactics, as well as, the unlawful termination of ten employees making it impossible for the parties to reach agreement on a collective bargaining agreement during the statutory one-year period following the Union's certification. The General Counsel begins with its argument that Respondent failed and refused to negotiate the impact and implementation of Union office space and employee showers before requiring employees to move to a new location.

Respondent seems not to grasp the concept that its actions during this period may be considered bad faith bargaining during the one year following the certification of the Union. In fact, Respondent's Counsel contends that the General Counsel was mixing "apples and oranges" while what appears to have been happening was that the General Counsel was presenting various aspects of Respondent's conduct during the year following the Union's certification to establish bad faith bargaining based on the totality of Respondent's conduct during the period in question. Respondent not only contends that the Union failed to make a timely request to bargain impact and implementation of the relocation of the office spaces herein, but it contends that the change should be examined under the *de minimis* standard. Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986). Little needs to be said about Respondent's argument over the impact of office relocations since, for even the case cited by Respondent to relieve it of the obligation to bargain about the instant relocation of office space, holds that a relocation of office space over a distance of some four or five miles constituted a more than *de minimis* impact upon the bargaining unit employees involved and that it had an impact which was reasonably foreseeable. Social Security Administration, Office of Hearings and Appeals, Region II, New York, New York, 19 FLRA 328 (1985). Consequently, it is found that this office relocation case involves impact which is more than *de minimis*. In any event, Respondent presented no reason to find that the impact of this particular move was not more than *de minimis*.

Respondent's argument about whether the Union timely responded to its notice that it was going to relocate office space, depends on when the Union was given adequate or sufficient notice of the office relocation and whether it responded in a timely fashion to that notification. Respondent cavalierly suggests that at the time the Union was certified, the office relocation was "common knowledge" and had been pending since "1991". The fact that the relocation was common knowledge is irrelevant since adequate notice under present case law, generally requires "specific" notice of intended changes. Department of the Army, Harry Diamond Laboratories, Adelphi, Maryland, 9 FLRA 575 (1982); U.S. Department of the Air Force, Air Force Systems Command, Electronic Systems Division, Hanscom AFB, Massachusetts, 5 FLRA 637 (1981). Here any specific notice by Respondent came late in the game. Furthermore, an exclusive representative is not obligated to submit bargaining proposals prior to negotiations beginning. Long Beach Naval Shipyard, Long Beach, California, 17 FLRA 511 (1985). In addition, it was the Union who asked for information on the

office relocation on June 2, 1993, less than a month after its certification, and, not Respondent offering any notice of the relocation to the Union. If Respondent is relying on its notification to the Union of this change, then the clock still tolls and the Union's bargaining request could not be found untimely.

There is even more reason to find that the Union's proposals were not untimely for Respondent seems to be asking a lot from the Union while giving little. Thus, Respondent says that on June 2, the Union made requests that Respondent provide it with copies of the floor plans, parking lots and the projected date of the move so that its representatives could submit ground rules for negotiations of issues relating to the new facilities. While Respondent admittedly did not answer the Union's request until the June 10 meeting, it claims the Union was to supply ground rules for bargaining. It could not without some specific idea of what the move was about. Furthermore, Respondent never revealed the true projections with respect to the move, but instead placed it somewhere between August 1, 1993 and April 1, 1994, thereby, almost eliminating any urgency to negotiate the matter immediately. Again, Respondent argues that the Union was aware that the move would take place in November 1993 because a Union representative heard rumors that the move would take place at that time. I state anew that rumors are not specific or adequate notice of a change to an exclusive representative and it, therefore, still had no specific knowledge of when the change was to take place. Since Respondent did not supply the Union with the information requested on June 2 until the June 10 meeting, it says the Union missed its goal for supplying ground rules. If again, the Union had no specific knowledge of the move, but only rumor and common knowledge of what was taking place, it was clearly placed in a position that it could not timely respond with any timely or meaningful proposals. Furthermore, the parties clearly met about and discussed other bargaining issues prior to October 25, 1993 and the relocation issue was not resolved prior to the actual move on November 15, 1993.

It is my opinion that in the total circumstances of this case, it can hardly be seriously argued, as Respondent attempts to do, that the Union submitted untimely requests to bargain over the relocation. Simply put, in this case negotiations were proceeding at Respondent's pace and there were many other issues discussed. In all the circumstances, it seems clear that the relocation of office space was secondary when one considers the other issues of bargaining with which the Union was faced during the summer and fall of 1993.

That Union office space is a substantively negotiable condition of employment is an issue which the Authority has previously addressed. U.S. Department of the Army, Lexington-Blue Grass Army Depot, Lexington, Kentucky, 34 FLRA 247, 254 (1990), citing American Federation of Government Employees, Local 1631, 25 FLRA 366, 368-70 (1987), where the Authority, referencing a 1977 case decided by the Federal Labor Relations Council, stated that "it is well established that the use of office space by a union functioning as the exclusive representative of bargaining unit employees is a matter affecting conditions of employment." American Federation of Government Employees, Local 1626 and General Services Administration, Region 5, 5 FLRA 615 (1977).

The Authority has also found that an agency by relocating its District Office without first completing bargaining over the impact of the change, including the allocation of space and facilities to conduct union activities violated section 7116(a)(1) and (5) of the Statute. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 41 FLRA 1268, 1281 (1991). In that case, the agency did not dispute that Union office space was a substantively negotiable condition of employment, but instead argued that the parties' national agreement covered the issue and it had no further duty to bargain. That argument was rejected since a statutory, and not a merely contractual right was involved.

In situations where employees come into contact with dirt, dust, and chemicals in the course of their employment, it has also been found that shower and locker facilities are substantively negotiable conditions of employment. American Federation of State, County and Municipal Employees, AFL-CIO, Local 2477 et al., 7 FLRA 578, 588 (1982). There the argument that the matter concerned the methods, means and technology of performing work was rejected. Later, the Authority upheld this principle of law, but declined to make a negotiability finding because, the agency claimed it had no duty to bargain because the matter was covered by the applicable collective bargaining agreement and the Authority therefore directed the parties to another forum. American Federation of Government Employees, AFL-CIO, Local 644, 27 FLRA 375, 379-80 (1987).

Respondent never informed the Union that it felt that either the office space or the showers and lockers were nonnegotiable items. It first raised the issues before the FSIP on May 4, 1994 contending that the office space and showers should not be part of implementation and impact

bargaining because of a D.C. Circuit Court case which will be discussed in greater detail in Section B of this decision.

Accordingly, in all the circumstances, it is found that Respondent's failure to negotiate the impact and implementation of the relocation of Union office space and employee showers in this case, was in violation of section 7116(a)(1) and (5) of the Statute.

B. The D.C. Circuit Court of Appeals' Decision in 994 F.2d 868 Does Not Provide Respondent a Defense.

Respondent disputes that either Union office space or employee showers are substantively negotiable although it did not take this tack during negotiations. It argues, unpersuasively that it did convey a nonnegotiable message to the Union when Irizarry told them that neither the Union office nor the showers had anything to do with the relocation.

Respondent also points to court cases including the D.C. Circuit Court of Appeals case, Federal Labor Relations Authority v. United States Department of Justice, Immigration and Naturalization Service, United States Border Patrol, San Diego, California, 994 F.2d 868 (D.C. Cir. 1993) (Border Patrol), and argues that it is privileged to refuse to negotiate the otherwise negotiable conditions of employment because the Union did not have an office or showers immediately prior to the move.

While Respondent spends a great deal of time discussing these decisions, it knows full well that these decisions are not binding on the Authority unless and until it specifically embraces the decision, or is reversed by the Supreme Court. Michigan Army National Guard, Lansing, Michigan and National Association of Government Employees, Local R8-11, 11 FLRA 365, 374 (1983).[5] Here, the Authority has not adopted the Court's holding in the Border Patrol case. Thus, it is clear to the undersigned, that the Authority, as of this writing, adheres to the position that Union office space proposals are negotiable in the context of relocation negotiations, without regard to the Union's previous space status.

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See, also, U.S. Department of the Treasury, Customs Service, Region IV, Miami District, Miami, Florida, 38 FLRA 838 (1990), where both the administrative law judge and the Authority specifically rejected a contrary holding by the 5th Circuit Court of Appeals, 38 FLRA at 844 and 858-59.

This is consistent with the Authority's general rule which controls this matter, that a party is not limited to bargaining over only the exact change proposed by the other party. U.S. Department of the Treasury, Customs Service, Washington, D.C. and Customs Service, Northeast Region, Boston, Massachusetts, 38 FLRA 770 (1990) (Customs). There, the Authority noted that adopting such a restriction "would be inconsistent with common understandings of collective bargaining agreements as well as with the policies and purposes of the Statute." 38 FLRA at 784. In the Customs decision, the Authority found that a change in a rotation schedule affected matters beyond the schedule itself, including "duration, work assignments, work locations, overtime, and the like." Id. Similarly, in this case, a change in work space affects the ability to create space for a Union office and the ability to install showers. For example, if, as here, the proposed new space is larger, which it admittedly is, then one can reasonably assume there will be room for things not found in the old space.

Second, the instant case is factually distinguishable from the Border Patrol decision. As noted in the concurring opinion in Border Patrol, the Authority made an argument that the Agency had implicitly agreed to negotiate over Union office space as part of impact and implementation bargaining over the relocation. However, the concurring Judge considered the "agreement" too obscure and ambiguous to find a bargaining obligation. 994 F.2d at 874. In the instant case, however, we have Irizarry's clear and unambiguous agreement to nego-tiate office space in her October 25, 1993, letter to the Union. Further, there is Irizarry's earlier suggestion to the Union on September 15, 1993 to check FSIP decisions in connection with office space. Border Patrol decision -- not FSIP decisions. Finally, Respondent actually submitted counter-proposals on the issue of office space on October 28, 1993.

In addition, this case is different because the Union here was newly certified and could not have been expected to have already had an office. Furthermore, the decision to relocate had been made prior to the Union's certification. According to Respondent's view, the Union would have first had to negotiate for office space in the old facility before beginning to negotiate over the new facility. In any event, given the time the parties had to devote to negotiate the reassignments and other relocation issues, and to litigate the discriminatory terminations, it is unlikely that the Union could have been successful in obtaining an agreement on office space in the old space before November, when the relocation was unilaterally implemented.

Assuming that the Border Patrol decision is binding in this case, there the Court based its decision essentially on the fact that failure to bargain over Union office space was never specifically raised in the complaint, nor litigated at the hearing; thus, reasoned the Court. It was "unfair" to expect the agency to bargain over something not expressly contained in the Judge's order.[6] Unlike that case, the issue here was in fact raised in the Complaint and was fully litigated. Indeed, it is this dispute which caused the FSIP to decline jurisdiction and direct the parties to complete this litigation.

Finally, as already noted, Union office space is substantively negotiable. Accordingly, the Union has an absolute right, absent a clear and unequivocal waiver, to negotiate at any time over office space. *Assuming arguendo* that the rationale of the Border Patrol case applies here (i.e., assume that Respondent was free to implement the relocation without completing bargaining over Union office space), there can be no excuse for its continued refusal to negotiate the issue even after the move. The fact that the parties called the later negotiations "post-implementation" bargaining is only a matter of semantics. Apparently, Respondent is arguing that if the Union had just announced that it was through bargaining over the relocation and was now offering new, independent proposals for Union office space, Respondent would have negotiated. Given Respondent's refusal to bargain over the fundamental grievance/ arbitration procedure proposals unless it was part of negotiations for an entire contract, it is reasonable to conjecture that it would not have entertained proposals for Union office space in a separate, independent context. Not only is it doubtful that Respondent would have negotiated, even under those circum-stances, but to require the Union to separately label its proposals is senseless. Under Respondent's view the Union no doubt would be required to place each proposal in a "neat little package" at precisely the time Respondent thinks is best; if the Union fails in this respect, under Respondent's view, an otherwise negotiable proposal becomes nonnegotiable. Under such an arrangement, Respondent could tie up negotiations perpetually.

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Thus, the Court rejected the Authority's argument that it should have objected to the order via exceptions: "neither the Agency nor any other litigant could be expected to object to something that the order did not contain." 994 F.2d at 873.

For the foregoing reasons, Respondent's arguments that the Union's proposals for impact bargaining on office space and showers for all employees are nonnegotiable, are rejected.

C. No exigency required Respondent to implement its office relocation prior to completion of impact and implementa-tion negotiations.

Respondent argues that its move was completely justified as an "overriding exigency." As proof, Respondent offered a letter from GSA, which it claims, shows that GSA mandated the move, thereby leaving it no choice but to implement the relocation without completing negotiations. The GSA letter, as already noted, only urged Respondent to reconsider its request to delay the move and did not require it to move at that time. The worst case scenario envisioned by GSA, was some $19,000 in additional monthly rent, if the move was not made precisely when GSA preferred. The letter provides no exigency or excuse for Respondent to implement the office relocation herein prior to finishing negotiations herein. The Authority observed, quoting from American Federation of Government Employees v. FLRA, 785 F.2d 333 at 338 (D.C. Cir. 1986):

> [E]conomic hardship is a fact of life in employ-ment, for the public sector as well as the private. Such monetary considerations often necessitate substantial changes. If an employer was released from its duty to bargain whenever it had suffered economic hardship, the employer's duty to bargain would practically be non-existent in a large proportion of cases.

Lexington-Blue Grass Army Depot, Lexington, Kentucky and American Federation of Government Employees, AFL-CIO, Local 894, 24 FLRA 50, 54 (1986). Thus, monetary costs would not render an otherwise negotiable proposal nonnegotiable and, therefore should not be considered in evaluating whether an agency's mission necessitated the move. Keeping in mind that Respondent did not want to bargain over a grievance/
arbitration procedure, which is an essential part of the collective bargaining agreement, unless it was part of negotiations for an entire contract, it would be reasonable to assume that it would not have entertained proposals for Union office space in a separate, independent context. Furthermore, it is hard to believe that GSA would issue any order to Respondent, that would not be in writing. Thus, it is my opinion that what did happen is that GSA simply

notified Respondent that it could be liable for extra rent money if it did not move, and Respondent, ostensibly to save money, decided to forgo its bargaining obligations under the law.

The record in this case discloses that a move, from a building where Respondent had been a tenant since the 1960's, had been contemplated by Respondent since at least 1987. There is no evidence to show that its inability to move to new space from 1987 until the actual move took place, had any bearing on its ability to perform its mission. In this case, it is not likely that Respondent's mission could not be performed if it did not move on exactly November 15, 1993. This is particularly true, where as here, Respondent seems to be responsible for most of the pre-move delay in negotiations. It is undisputed that Respondent, although planning to move for several years, and in possession of floor plans since at least June 1993, when it gave a copy to the Union, did not formulate its proposed seating arrangements until October 5, 1993 (or, at least, did not provide such plans to the Union until then). Furthermore, Respondent's Counsel acknowledges in her opening statement the length of time it took Respondent to do the following:

> to work out the seating arrangements, the office -- the office set-up. That took quite some time, because we were moving into -- from a smaller space to a larger space -- to more office space; however, we needed private offices for certain people. We had to get together with our management people to make that decision.
>
> There were several meetings that took place. When we did make that decision -- and as soon as we did we gave that information to the Union . . .

Respondent can hardly argue that after months, even years, of preparation time to formulate its proposals, the Union should have been expected to rapidly formulate its own proposals, meet with a mediator and reach total agreement within Respondent's suddenly accelerated time table. In this regard, it is noted that the Union did everything it could reasonably be expected to do throughout 1993, requesting information several times, only to get delayed responses, if any; the Union also attempted to contact both Respondent and GSA about safety concerns, only to be given the "run-around."

Lastly, it is also worthy of note, that the undisputed record evidence demonstrates that the new space was not

ready for safe occupancy at the time Respondent required its employees to move and, thus reveals even more plainly the lack of connection between the move and Respondent's ability to perform its mission.

Accordingly, it is found and concluded that Respondent failed to meet its burden of showing that exigent circumstances prevented it from delaying implementation of the instant office relocation. Cf. Department of the Treasury, U.S. Customs Service, Region I, 16 FLRA 654, 672 (1984).

D. Respondent violated section 7116(a)(1) and (5) by delay-ing negotiations for a collective bargaining agreement and by refusing to negotiate over a grievance/arbitration procedure until the union submitted all of its proposals for an entire collective bargaining agreement. Respondent's total conduct by engaging in a pattern of

bad faith bargaining prevented completion of

negotiations during the one-year period following the Union's certification.

Respondent asserts that there is no evidence of bad faith or dilatory tactics on its part. In this regard, it is argued that the fact that it believed that certain proposals were not negotiable or did not agree with all the Union's proposals is clearly not evidence of bad faith or any intent to delay negotiation of the collective bargaining agreement. While one might agree with Respondent's basic premise, there is more to this case. Respondent ignores a background of discriminatory treatment of employees that occurred during the very period in which negotiations were to take place. Putting this case in focus certainly requires that the trier of fact, consider at least as background, the discriminatory termination of ten employees during this same period, terminations for which the Authority in U.S. Geological Survey and Caribbean District Office, San Juan, Puerto Rico, 50 FLRA No. 76 (1995) ordered reinstatement and back pay. Respondent's conduct in that regard is hard to overlook when assessing the merits of this case.

To determine whether a party has bargained in good faith, the fact finder must look to the totality of the circum-stances. Social Security Administration, 18 FLRA 511, 523 (1985). Some of the indicia considered by the Authority in determining whether there is bad faith is: unilateral setting of dates for negotiations, id.; and insisting on reaching agreement on ground rules proposals that indicate a desire "to delay, or avoid, 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) (Wright-Patterson).

Section 7121(a)(1) of the Statute prescribes that, there can be no collective bargaining agreement without a grievance procedure included. See U.S. Department of the Air Force, Lowry Air Force Base, Denver, Colorado, 36 FLRA 183, 187 (1990). Since a grievance/arbitration procedure is required by Statute to be a part of any collective bargaining agreement in the Federal sector, it is puzzling that the Union's ground rules proposals, which started with such a procedure could be deemed not to be negotiable. Any argument that Respondent was simply making a counter proposal, in suggesting that all contract articles be considered together, for the sake of convenience, must be rejected. Such an argument would have merit only where a Respondent has indicated a willingness to commence substantive bargaining in a timely manner. Needless delays exhibited or proposed by either side may, in my opinion,

constitute evidence of bad faith bargaining. It follows, then, that Respondent's refusal to consider such a proposal could certainly be considered in determining whether the totality of the conduct herein constitutes bad faith bargaining in violation of section 7116(a)(1) and (5) of the Statute.

In this case, the parties met to negotiate on the time table dictated by Respondent.[7] Respondent thereby, effectively set the dates for negotiating by leaving the Union no choice but to accept the delays or never negotiate at all. Additionally, Respondent's ground rules were designed to delay the bargaining process interminably. In the Wright-Patterson case, the agency sought to avoid bargaining by insisting to an impasse, as part of ground rules negotiations, that the Union waived its right to conduct midterm bargaining via a "zipper" clause. The Authority found bad faith bargaining, noting particularly, "that ground rules proposals must, at a minimum, be designed to further, not impede, the bargaining for which the ground rules are proposed."

Respondent's ground rules proposals and its conduct in responding to the Union's proposals appear to have been devised to thwart rather than further, the bargaining process. In addition, Respondent used a few days' training as an excuse not to begin ground rules bargaining for nearly a month, from February 25, 1994, to March 23, 1994. Once the ground rules negotiations began, Respondent dawdled for another month and a half, to a point where the parties were required to seek the assistance of a mediator simply to negotiate ground rules. The undisputed record evidence shows that this delay was caused, essentially, by two things: (1) Respondent's adamant insistence that the Union agrees to forego submitting initial proposals for 12 weeks -- proposals the Union was prepared to submit immediately. (2) Respondent's unyielding insistence on refusing to allow the Union to reopen the negotiations if the agency head disapproves the agreement.

In short, Respondent went to impasse on the ground rules negotiations because of its insistence on an inordinately long process. As admitted by Irizarry, Respondent was demanding a 12-week delay before the Union

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A prime example of delay is depicted when the Union proposed to get started March 1, 1994, and Respondent insisted on March 23 for no reason other than some training was scheduled for March 15. There was never any explanation why Respondent could not meet sometime between the 1st and the 15th.

even was allowed to submit proposals; an additional 12-week delay before Respondent was required to submit counter-proposals; yet another four-week delay for the Union to review Respondent's counter-proposals; and, then, even more inconceivably, 15 to 18 weeks of negotiation before a mediator could even be called in. Under Respondent's vigorously pursued proposals, the parties were required to negotiate for nearly a year before they could even begin to seek third party assistance. Although it must be conceded that parties often take excessive amounts of time to negotiate an entire agreement, rarely is it done so by design, as here. Requiring the other side to agree to an unnecessarily lengthy time to even get the ball rolling, without any good reason, in my view is evidence of bad faith negotiations. Since there was no sound reason offered for the undue delays in this matter, it must be found that its counter-proposals were designed to stall the bargaining herein.

Respondent argues that the Union could have submitted contract proposals prior to February 25, 1994, thereby increasing the chances of reaching agreement before expiration of the one-year statutory period in section 7111 (f)(4). This argument falls short when one looks at Respondent's stubborn refusal to negotiate over the plainly negotiable grievance/
arbitration proposals at all, and its insistence, as has been noted, that the Union wait 12 additional weeks to submit proposals for a full contract. Obviously, in Respondent's view, the Union was premature, not tardy, when it submitted proposals on February 25, 1994. One can argue in an ordinary case, that a union, if it expects to reach agreement on a collective bargaining agreement within the first year after certification, should submit proposals as soon as possible after certification. In this case, the Union was faced with what turned out to be discriminatory terminations, the relocation, the changes in working hours and the job reassignments right from the beginning. Furthermore, it encountered an agency that fought it every step of the way, delaying responses to information requests and bargaining requests as outlined in the record. It was also confronted with refusals to negotiate office space or a grievance procedure, both of which are vital to an exclusive representative's existence. With respect to the office space, Respondent pretended to be negotiating the issue throughout the entire certification year -- until just one day before the end of the certification year, on May 4, 1994, it then announced in writing to the FSIP that it did not really have the duty to bargain after all. If Respondent felt this argument was legitimate, it should have timely notified the Union earlier, thereby allowing the

Union to possibly take steps to resolve the issue via a third party or take steps to negotiate for office space independent of the relocation negotiations.

Finally, upon expiration of the statutory period in section 7111(f)(4) (where unions are allowed to negotiate collective bargaining agreements free from certification challenges), on May 5, 1994, Respondent relented and signed a ground rules agreement allowing the Union to immediately submit proposals. Significantly, however, Respondent insisted on a period of 12 weeks to prepare its response. In this case, Respondent had several Labor Relations professionals, but felt the need to take 12 weeks to study and research an unseasoned Union's proposals, and also was never able to adequately research case law on agency head disapproval of a contract. Notwithstanding its difficulty, after the decertification was filed, Respondent in less than a month was able to research Authority case law and conclude that it could discontinue bargaining with the Union.

In light of the foregoing, it is found and concluded that Respondent violated section 7116(a)(1) and (5) of the Statute by relocating bargaining unit employees represented by the Union without completing impact and implementation negotia-tions and, engaging in unlawful conduct which prevented the parties from completing negotiations for a new collective bargaining agreement prior to expiration of the one-year period following the Union's certification as exclusive representative.

The Remedy

In addition to the normal cease and desist Order and Notice posting, the General Counsel seeks an order directing Respondent back to the bargaining table concerning the issues of Union office space and employee shower/locker facilities. Respondent, on the other hand, suggests that the only remedy in this case, if a violation is found is a prospective bargaining order to negotiate. All sides agree that a status quo ante remedy would be disruptive, and therefore, inappropriate.

The General Counsel recognizes that the decertification petition in Case No. AT-DR-40094, is still pending and that, as a rule, agencies are not required to negotiate during the pendency of a question concerning representation. Immigration and Naturalization Service, 16 FLRA 80 (1984). Therefore it urges the Authority to exercise its broad remedial powers under sections 7105(g) and 7118 of the Statute to declare that there is no question concerning representation, thereby allowing the Union the statutory

one-year period, free of outside challenges and management unfair labor practices, to negotiate a contract with the new one-year period beginning on the date of the Authority's Order.

The Authority clearly possesses the power to fashion such a remedy. See generally National Treasury Employees Union v. FLRA, 910 F.2d 964 (D.C. Cir. 1990) (en banc). As noted by the Authority in Department of the Army, U.S. Army Soldier Support Center, Fort Benjamin Harrison, Office of the Director of Finance and Accounting, Indianapolis, Indiana, 48 FLRA 6 (1993). Furthermore, there is ample private sector guidance, which has approval of the Supreme Court, since the National Labor Relations Board has established a rule requiring a one-year period in which a union's certification must be honored. In this regard, the Board long ago found it appropriate to extend the length of time a union should be free from challenge to its certification in cases of employer misconduct. Mar-Jac Poultry Company, Inc. and Local 454, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, 136 NLRB 785 (1962); Glomac Plastics, Inc. and Textile Workers Union of America, AFL-CIO-CLC, 234 NLRB 1309 (1978); see also Lustrelon, Inc. and Solidarity of Labor Organizations International Union, 289 NLRB 378, 379 (1988); Ray Brooks v. N.L.R.B., 348 U.S. 96, 1001-1003, 35 LRRM 2158. Section 7111(f)(4) of the Statute codified this rule in the Federal sector.

The General Counsel argues that Respondent sought to take advantage of its own failure to deal with the Union in good faith during the statutory one-year period. I am in agreement that Respondent's conduct from the very first labor-management meeting between the parties was intended to stall the Union's effort to negotiate. Its pattern of behavior continued with the unilateral implementation of the office relocation on November 15, 1993, the refusal to bargain even after-the-fact, the issues of Union office space and employee showers, the refusal to consider negotiating a grievance and arbitration procedure before negotiating the entire collective bargaining agreement (even though a grievance procedure is a statutory requirement for a contract) and its insistence to an impasse, on ground rules negotiations for the collective bargaining agreement, that the Union waive its right to reopen the negotiations upon agency head disapproval and forego, for no apparent reason other than to delay matters, submitting already-prepared proposals for 12 weeks. In short, the Union was precluded from its statutory right to have a year free of employer misconduct to negotiate an initial collective bargaining agreement.

Based on the foregoing, the undersigned rejects Respondent's assertion that it acted in good faith in negotiating either the impact and implementation issue or on the ground rules for a full contract. Furthermore, Respondent's position on its neutrality in the matter is also rejected.

Accordingly, it is recommended that the Authority fashion an extraordinary remedy in this matter, and declare that no question concerning representation exists, thereby allowing the Union the statutory one-year period, free from outside challenges and unfair labor practices, in order that it might negotiate a collective bargaining agreement with the new one-year period beginning on the date of the Authority's order.

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Statute, U.S. Geological Survey, Caribbean District Office, San Juan, Puerto Rico:

1. Shall not:

(a) Unilaterally change conditions of employment by relocating its San Juan, Puerto Rico District Office without first bargaining with the American Federation of Government Employees, AFL-CIO, Local 1503, over the impact and implemen-tation of the change, including the allocation of space and facilities to conduct union activities and over the employee shower/locker facilities.

(b) In any like or related manner interfere with, restrain, or coerce its employees in the exercise of the rights assured them by the Federal Service Labor-Management Relations Statute.

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

(a) Upon request, negotiate with the American Federation of Government Employees, AFL-CIO, Local 1503, the exclusive representative of its employees over the impact and implementation of the changes, including the allocation of space and facilities and over the employee shower/locker facilities.

(b) Regard the American Federation of Government Employees, AFL-CIO, Local 1503 as exclusive representative as if the initial year of certification has been extended for an additional year from the commencement of bargaining pursuant hereto.

(c) Post at all locations within the U.S. Geological Survey, Caribbean District Office, San Juan, Puerto Rico where bargaining unit employees represented by the American Federation of Government Employees, AFL-CIO, Local 1503 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 District Chief and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and 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.

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

Issued, Washington, DC, October 30, 1995

____

ELI NASH, JR.
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally change conditions of employment by relocating our San Juan, Puerto Rico District Office without first bargaining with the American Federation of Government Employees, AFL-CIO, Local 1503, over the impact and implementation of the change, including the allocation of space and facilities to conduct union activities and over the employee shower/locker facilities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce its employees in the exercise of the rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL notify, and upon request, negotiate with the American Federation of Government Employees, AFL-CIO, Local 1503, the exclusive representative of our employees over the impact and implementation of the changes, including the allocation of space and facilities and over the employee shower/locker facilities.

WE WILL regard the American Federation of Government Employees, AFL-CIO, Local 1503 as exclusive representative as if the initial year of certification has been extended for an additional year from the commencement of bargaining pursuant hereto.

(Activity)

Date: By:

(Signature) (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 questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, and whose telephone number is: (404) 347-2324.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by ELI NASH, JR., Administrative Law Judge, in Case Nos. BN-CA-40286 and BN-CA-40645, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

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REGULAR MAIL:

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Dated: October 30, 1995
Washington, DC