65 FLRA No. 17

UNITED STATES
DEPARTMENT OF THE AIR FORCE
RANDOLPH AIR FORCE BASE
SAN ANTONIO, TEXAS
(Respondent)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1840
(Charging Party/Union)

DA-CA-09-0109

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DECISION AND ORDER

September 13, 2010

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This unfair labor practice case is before the Authority on exceptions to the attached decision of the Administrative Law Judge (Judge) filed by the General Counsel (GC). The Respondent filed an opposition to the GC's exceptions.

The complaint alleges that the Respondent violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by refusing to bargain in good faith with the Union. The Judge found that the Respondent did not violate the Statute as alleged because the Union failed to submit substantive proposals to the Respondent, as required by the parties' collective bargaining agreement.[*]

Upon consideration of the decision and the entire record, we adopt the Judge's findings, conclusions, and recommended order and deny the GC's exceptions.

II. Order

The complaint is dismissed.

[*] In its exceptions, the GC challenges several of the Judge's factual findings and credibility determinations. In determining whether a judge's factual findings are supported, the Authority looks to the preponderance of the record evidence. *U.S. Dep't of Def., Def. Language Inst., Foreign Language Ctr., Monterey, Cal.*, 64 FLRA 735, 744 (2010) (*DOD*) (Member Beck dissenting in pertinent part). Additionally, the Authority will not overrule a judge's credibility determination unless a clear preponderance of all relevant evidence demonstrates that the determination was incorrect. *Id.* at 743. Here, the Judge's factual findings are supported by a preponderance of the record evidence, and the GC has failed to demonstrate, by a clear preponderance of all relevant evidence, that any of the Judge's credibility determinations were incorrect. Moreover, the plain wording of the parties' collective bargaining agreement (CBA) supports the Judge's interpretation of the CBA as requiring the submission of substantive proposals along with a request to renegotiate the CBA. *See* Judge's Decision at 3, 9. In this regard, the CBA distinguishes the "written proposals for negotiation[]" that a party must submit along with a request to renegotiate the CBA from "[g]round rules" proposals that the parties develop together. *See id.* at 3.

Member Beck notes that, for the reasons stated in his separate opinions in *U.S. Dep't of the Air Force, 12th Flying Training Wing, Randolph Air Force Base, San Antonio, Tex.*, 63 FLRA 256 (2009) and *U.S. Dep't of the Air Force, Air Force Materiel Command, Space & Missile Sys. Ctr., Detachment 12, Kirtland Air Force Base, N.M.*, 64 FLRA 166 (2009), he reviews the Judge's factual findings using a "substantial evidence in the record" standard rather than a "preponderance" standard.

Office of Administrative Law Judges

U.S. DEPARTMENT OF THE AIR FORCE
RANDOLPH AIR FORCE BASE
SAN ANTONIO, TEXAS
Respondent

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, LOCAL 1840
Charging Party

Case No. DA-CA-09-0109

Michael A. Quintanilla, Esq.
For the General Counsel

J. Todd Hedgepeth, Esq.
For the Respondent

Paul D. Palacio
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. §7101, *et. seq.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (the Authority/FLRA), 5 C.F.R. Part 2423.

On February 4, 2009, the American Federation of Government Employees, Local 1840 (Charging Party or Union), filed an unfair labor practice charge with the Dallas Region of the Authority against the U.S. Department of the Air Force, Randolph Air Force Base, San Antonio, Texas (Respondent or Randolph AFB). (G.C. Ex. 1(a)) On October 30, 2009, the Regional Director of the Dallas Region of the Authority issued a Complaint and Notice of Hearing, which alleged that the Respondent violated section 7116(a)(1) and (5) of the Statute by refusing to bargain in good faith by refusing to negotiate a new collective bargaining agreement with the Union. (G.C. Ex. 1(d)) On November 24, 2009, the Respondent filed an Answer to the complaint, in which it admitted certain allegations while denying the substantive allegations of the complaint. (G.C. Ex. 1(h))

A hearing was held in San Antonio, Texas on January 19, 2010, at which time all parties were afforded a full opportunity to be represented, to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. The General Counsel and the Respondent filed timely post-hearing briefs, which have been fully considered.

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

STATEMENT OF THE FACTS

The Respondent is an agency within the meaning of section 7103(a)(3) of the Statute. (G.C. Ex. 1(d), (h)) The Union is a labor organization within the meaning of section 7103(a)(4) of the Statute. (G.C. Ex. 1(d), (h)) Kim Bailey occupied the position of Labor Relations Officer at Randolph AFB from at least June 2008 through December 2008, and, at all times material to this matter, has been a supervisor and/or management official within the meaning of section 7103(a)(10) and (11) of the Statute. (G.C. Ex. 1(d), (h); Tr. 77)

Randolph AFB and the Union are parties to a collective bargaining agreement entitled *Memorandum of Agreement between Commander, 12th Support Group, Randolph Air Force Base, Texas and Local 1840, American Federation of Government Employees, AFL-CIO*, (Jt. Ex. 1)(CBA). The CBA was originally signed on August 6, 1993, and was rolled over at three year intervals in 1996, 1999, 2002, and 2005. Article 8, Duration of Agreement, states, in part:

> 8-2. This agreement will remain in effect for three years from the date of its approval by HQ AETC. On the third anniversary of its approval and each three years thereafter, it will automatically be renewed for an additional three year term unless, during the period between 105 and 60 days prior to the end of one of the three year terms, either Party gives written notice to the other Party of its desire to renegotiate the agreement. It is understood that this agreement will be terminated if it is officially determined that the Union is no longer entitled to exclusive recognition under Title VII.

> 8-3. Written notice of either Party's desire to renegotiate the agreement will be accompanied by the Party's written proposals for negotiation. Ground rules for the negotiations will be drawn up by mutual agreement and in compliance with applicable directives. The negotiations will be scheduled to begin within 60 days after the second Party receives the written notice, unless both Parties agree to a later date. The existing agreement will remain in effect until such time as the new agreement is signed by the Parties and approved by HQ AETC. (Jt. Ex. 1)

On June 9, 2008,[1] Vance Miller, President, AFGE, Local 1840, sent the following letter to Kim Bailey, Labor Relations Officer:

> Subject: Contract Negotiations
>
> 1. Pursuant to Memorandum of Agreement (Contract) between the American Federation of Government Employees, AFL-CIO (AFGE-Union) Local 1840 and 12th MSG, Article 8, Section 8-2, the Union is hereby providing notification of Intent to Re-Negotiate the Contract.
> 2. The Union desires to Re-Negotiate all Articles of the Contract.
> 3. The Union will provide its written proposal's (sic) and ground rules no later than ten (10) business days prior to the start of negotiations.
> 4. The Union request (sic) that negotiations of the Contract to start no later than October 1, 2008, and continue through completion.
> 5. Should there be any questions contact the undersigned.

(G.C. Ex. 2; Tr. 45, 57-58)

The Respondent did not furnish a written reply to the Union's demand to bargain; however, there were ongoing discussions between Bailey and Miller regarding the status of proposals from June through September 2008. Specifically, Miller testified that on several occasions he asked Bailey when he would be receiving the Respondent's ground rules proposals; while Bailey testified that on several occasions she asked Miller when the Respondent would be receiving the Union's ground rules and substantive proposals. (Tr. 59-60, 64, 81, 99)

Sometime in August, Miller contacted Paul Palacio, AFGE National Representative, regarding his frustrations with the Respondent's lack of action. Palacio contacted Bailey, who agreed to send him the Respondent's ground rules proposals.[2] (G.C. Ex. 3; Tr. 16-17, 19)

Miller, Palacio and Mark Gibson, AFGE, AFL-CIO Labor Relations Specialist, met in late September to discuss the status of the negotiations and the Union's ground rules proposals. The Union determined at that time that it wanted to poll its bargaining unit employees to determine what issues were the most important to them. The Union officials thought it would be helpful if they were allowed to have a meeting of employees at a facility at Randolph AFB. Miller agreed to contact Bailey for permission. According to Palacio, if Bailey would not agree to this group meeting, he intended to add this request to the Union's ground rules proposals, which he was still in the process of creating. (Tr. 20-21, 61-62)

On September 30, Miller approached Bailey to ask if the Union could meet with all the bargaining unit employees in an auditorium to present them with a survey that the Union created. (G.C. Ex. 6; Tr. 61-62, 80) While Bailey did not agree with the proposed group meeting, she did agree that the Union could present the survey to employees in their break rooms. (G.C. Ex. 4; Tr. 62) Bailey also informed Miller that she had not received the Union's ground rules proposals. (G.C. Ex. 4; Tr. 63)

In a series of emails in late September, Miller and Palacio discussed the survey and the status of the Union's ground rules proposals. (G.C. Ex. 4) Palacio reminded Miller of the decision to delay the ground rules proposals until Bailey responded to their request for the group meeting. Palacio asked Miller

1. All dates are in 2008, unless otherwise specified.

2. Bailey asserted that the document she sent to Palacio on August 30 was not the Respondent's ground rules proposal, but rather a sample of ground rules that she had used in a previous contract negotiation. (Tr. 79) She did change some of the information to reflect the correct parties and left certain date information blank to be filled in at a later time, following negotiations. Palacio appears to have assumed that the document was, in fact, the Respondent's ground rules proposal. However, I credit Bailey that this document was meant to serve as a sample for the Union's ground rules proposals. This is entirely consistent with the Respondent's position that the requesting party (in this case the Union) was required to submit the initial proposals.

if the break room drop was sufficient for his needs. (G.C. Ex. 4) On October 1, Miller responded that the break room drop was sufficient and that the Union was making 500 copies and would start distribution on the next Monday (which would be Monday, October 6, 2008). (G.C. Ex. 4, 6)

According to the Union, late on October 1, Palacio emailed the Union's ground rules proposal to Bailey. (G.C. Ex. 5) Bailey denies ever receiving this proposal from Palacio. (Tr. 79, 86)[3]

On October 2, Bailey sent the following Memorandum to Miller, titled *Contract Negotiations*:

> 1. On 9 June 2008, AFGE Local 1840 provided notice to this office of its intent to re-negotiate the contract (attachment 1). In accordance with Article 8, 8.3 "Written notice of either Party's desire to renegotiate the agreement will be accompanied by the Party's written proposals for negotiation." Since no proposals were received, your intent to request to begin contract negotiations is being returned without action. The timeframe to request full term negotiations has expired.
>
> 2. If you would like to request negotiations for mid-term bargaining, you may submit a written request identifying the articles you wish to negotiate along with the proposed changes. Such a request must be submitted no earlier than 16 months after the effective date of the contract and no later than 18 months after the effective date of the contract.
>
> 3. Should you have any questions please feel free to contact me at (210) 652-4658.

(G.C. Ex. 7)

The Union did make an attempt to get the negotiations back on track, but was unsuccessful. (Tr. 49-50, 95)

POSITIONS OF THE PARTIES

General Counsel

Counsel for the General Counsel (GC) asserts that the Union properly submitted a memo requesting to renegotiate the existing collective bargaining agreement on June 9, 2008. Respondent had a duty to bargain and by refusing to do so, by letter dated October 1, failed to bargain in good faith with the Union in violation of section 7116(a)(1) and (5) of the Statute. The GC argues that the parties' CBA does not provide the Respondent with a defense to do what would otherwise be a violation of section 7116(a)(1) and (5). *Internal Revenue Service, Wash., D.C.*, 47 FLRA 1091 (1993)(*IRS*); *Social Security Administration*, 64 FLRA 199, 202 (2009).

The GC argues that the parties were engaged in the bargaining of a new contract from June 9, 2008 through October 2, 2008. On June 9 the Union stated its desire to renegotiate the entire agreement and proposed negotiations begin no later than October 1. This was an obvious ground rules proposal, which did not foreclose the possibility that negotiations could begin earlier or later. The GC asserts that the Respondent's argument that the October 1 date was a "deadline" for negotiations which, if not met, foreclosed all negotiations, is ridiculous and should be disregarded. The GC also notes that another ground rules proposal contained in the June 9 memo concerned the submission of substantive proposals at least ten days before start of negotiations. Again, Respondent now argues that this "deadline" imposed an affirmative duty on the Union and, since it was not met, the Respondent was free to terminate negotiations. The GC argues that the Respondent's deadline theory is "exceptionally unreasonable". The GC argues that substantive negotiations were not set to begin on October 1, and to suggest that the parties agreed that the Union would submit written proposals ten days prior to October 1, whether or not negotiations were set to begin on that day or not is unsupported by the record.

3. I credit Bailey's testimony that she never received this document from the Union. I found her testimony straight forward throughout this proceeding. Although the General Counsel submitted emails regarding the service of this document, I find its late appearance in the record questionable. I note that the Union never referenced sending ground rules proposals to the Agency in its initial unfair labor practice charge in this matter, although it listed other correspondence. (G.C. Ex. 1(a)) Further, in its attempts to have the Agency renew the negotiations after the October 2 letter, it never mentioned that it had submitted ground rules proposals. (Tr. 54-55) The Union offered no explanation for these apparent inconsistencies.

The GC argues that the Respondent unilaterally terminated negotiations on October 2. The GC notes that, if the Respondent truly had an issue relating to the timing of the Union's substantive proposals, it could have refused to bargain in June. The Respondent did not do this, however, and continued to deal with the Union on a regular basis from June through September.

The GC specifically argues that the Respondent's interpretation of Article 8, Section 8-3 is unsupported by the record evidence. The Respondent claims that the Union was required to submit all proposals for the negotiation of a new contract when it submitted notice of its desire to renegotiate the parties' agreement. This interpretation ignores the realities of collective bargaining, in particular, term bargaining, which requires multiple exchanges of multiple proposals in a give and take exchange.

Finally, the GC argues that even if the judge concludes that the plain language of Article 8, Section 8-3 called for submission of any and all substantive proposals on the entire contract when it submitted its demand to bargain, there is substantial evidence in the record to demonstrate that the parties agreed to a different process for this particular negotiation.

Respondent

The Respondent argues that it did not violate the Statute in this matter, but that at all times it approached negotiations with a sincere resolve to reach agreement. It received the Union's request to negotiate and agreed to a requested extension for a "no later than" October 1, 2008 deadline. The Respondent also agreed to the Union's request that they provide its written proposals and ground rules no later than 10 business days prior to the start of the negotiations (thus, 10 days prior to October 1). The Respondent reminded the Union on numerous occasions that they needed to submit substantive proposals prior to the October 1 deadline. The Respondent provided sample ground rules to assist the Union in the drafting of their proposed ground rules. The Union, however, did nothing between June 9 and October 1.

The Respondent argues that it is important to look at the Union's behavior and not just the Respondent's. In order to protect their right to bargain, the Union must timely request to bargain, submit negotiable proposals, bargain in good faith, and timely request FSIP assistance if impasse is reached. *United States Dep't of Labor, Wash., D.C.*, 60 FLRA 68, 70 (2004). While the Union did timely request to bargain, they never submitted any negotiable proposals on any articles of the existing agreement. It was the Union that failed to bargain in good faith in this matter.

The Respondent argues that the negotiations on the CBA could not start until the Union provided written proposals on the articles of the agreement they desired to renegotiate. See Article 8, Section 8-3. Having received no written proposals in accordance with the Union's own request to negotiate, the Respondent properly returned their request to renegotiate without action.

ANALYSIS AND CONCLUSIONS

The GC asserts that after the Union submitted a timely notice of the reopening of the CBA, the Respondent was obligated to negotiate a new contract with the Union and its refusal to do so violated section 7116(a)(1) and (5) of the Statute. Since the Respondent justifies its conduct by an interpretation of the CBA, I am required by *IRS*, 47 FLRA at 1103, 1110 to determine the meaning of the disputed provisions.

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.

Id. 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.

Id. at 1110.

The basic facts in this matter are clear: on June 9, the Union timely requests to reopen the parties' collective bargaining, indicating its desire to negotiate all of the provisions of the agreement. No substantive proposals are included with the request, but the Union does request that the negotiations begin no later than October 1 and that its proposals be submitted ten days before the beginning of negotiations. There is no written response from the Respondent. Representatives of the Union (President and National Representative) and the Respondent (Labor Relations Officer) do have ongoing discussions about the negotiations, mainly regarding when either party will receive the other's proposals.[4]

In September, with the initial October date looming, the parties increase communications. At no time, however, does the Union ever submit substantive proposals. Finally, in the afternoon of October 1, the Union submits ground rules proposals, which the Respondent denies receiving. On October 2, the Respondent returns the Union's request to bargain over the parties' CBA, stating that it has no duty to bargain since the Union has not followed the contract and submitted substantive proposals.

The Respondent asserts that its actions were allowed by Section 8-3 of the parties' CBA. This section, as noted above, states in part:

> Written notice of either Party's desire to renegotiate the agreement will be accompanied by the Party's written proposals for negotiation. Ground rules for the negotiations will be drawn up by mutual agreement and in compliance with applicable directives.

Using the standards and principles for interpreting collective bargaining agreements applied by arbitrators and the Federal courts, in addition to Authority case law, I conclude that the CBA requires that written proposals accompany the written notice of the desire to renegotiate. The plain language of the article specifically states that "written notice . . . to renegotiate the agreement **will** be accompanied by the Party's written proposals for negotiation." (emphasis added) I find that this language requires the requesting Party to submit its substantive proposals on the new collective bargaining agreement with its request to renegotiate. It is undisputed that the Union did not submit substantive proposals with its request to renegotiate or at any time thereafter. *See U.S. Dep't of Justice, Immigration and Naturalization Service, Wash., D.C.*, 52 FLRA 256 (1996).

In support of its position, the GC cites to the D.C. Circuit's decision in *Nat'l Ass'n of Gov't Employees, Local R5-136 v. FLRA*, 363 F.3d 468 (D.C. Cir. 2004)(*NAGE Local R5-136*) , which reversed, in part, the Authority's decision in *Dep't of Veterans Affairs, Ralph H. Johnson Medical Center, Charleston, S.C.*, 58 FLRA 432 (2003)(*Johnson Med. Ctr.).* The Court stated that the Authority relied on "an entirely untenable interpretation of the parties' collective bargaining agreement" in finding that the Agency did not violate the Statute. The Court found that the Union, in a mid-term bargaining request, met the collective bargaining agreement's requirements by meeting the deadline for requesting negotiation in the matter and submitting a written proposal. The Court found that the provision of the collective bargaining agreement could not reasonably be interpreted to require the Union to put all plausible proposals on the table within that brief period or to foreclose negotiation of any proposal submitted thereafter.[5]

The GC argues that the contractual provision and demand to bargain in the *Johnson Med. Ctr.* case are analogous to Section 8-3 and the demand to bargain in this case. In *Johnson Med. Ctr.*, a unilateral change case, the Union made *a status quo* request and was required to submit its proposals after the review of the information provided in response to an information request. The GC argues that, in this case, the Union requested to negotiate all articles of the contract, requested a date to begin negotiations on or before October 1, 2008, and requested to submit its substantive proposals ten days prior to when negotiations would begin. While the facts differ, those differences do not alter the meaning that must be taken from that case. The Circuit Court's decision contains recognition that bargaining in the labor context necessarily involves multiple exchanges of

4. The GC asserts that, to the extent the Respondent suggests that Palacio was not a representative of the Union for the purpose of these negotiations, the record demonstrates that Palacio was acting on behalf of the Union. *See United States Dep't of the Air Force, 12th Flying Training Wing, Randolph AFB, San Antonio, TX*, 63 FLRA 256 (2009). The Respondent, however, has not raised this issue in its brief and a ruling in this matter is unnecessary.

5. In a footnote, the Respondent argued that the Authority's decision in *Johnson Med. Ctr.* is not relevant, particularly noting the dissent of then-Member Pope. The Respondent failed to discuss the Court's decision in this matter.

proposals. In both cases the Respondent interpreted those provisions to mean all substantive proposals had to be submitted with the request to negotiate.

I find no evidence that the Respondent was requiring that the Union submit all of its substantive proposals at the time it submitted its notice. The Respondent's primary argument was that the Union *never* submitted *any* substantive proposals, either at the time of its request to renegotiate the collective bargaining agreement or at any time thereafter. While there is language in the G.C. Exhibit 3 (the Respondent's sample ground rules proposals) regarding proposals – "Neither Management or the Union will be obligated to negotiate on any subject not included in said proposals." – I do not find this language sufficient to establish that the Respondent rejected the Union's request to renegotiate on the ground that it did not furnish all of its substantive proposals. This is not a position that the Respondent argued in its defense. Therefore, I do not find the GC's arguments regarding the applicability of *Johnson Med. Ctr.* persuasive.

The GC also argued that if it was concluded that the plain language of Section 8-3 of the CBA called for the submission of any and all substantive proposals on the entire contract when the Union submitted its demand to bargain, there is substantial evidence in the record to demonstrate that the parties agreed to a different process for this particular negotiation. Respondent admitted that it was free to reject the Union's proposal of providing proposals ten days prior to the beginning of negotiations, but did not do so; that it could have raised this issue in its proposed ground rules, but did not do so; and that it could have provided a definite date by which the Union would submit their proposals in writing, but did not do so. In essence the GC argued that the Respondent, by its actions between June 9 and October 2, negates the applicability of Section 8-3 of the CBA to allow its behavior in discontinuing negotiations and returning the Union's request to renegotiate.

The evidence clearly shows that the Respondent did not respond in writing to the Union's June 9 request and did engage in discussions with the Union regarding when its proposals, both ground rules and substantive, would be furnished. No actual negotiations took place during this time period. It is also clear that the Respondent accepted the Union's proposal of October 1 as the latest date for beginning negotiations on the new collective bargaining agreement. While the Respondent never communicated this agreement in writing to the Union, from the verbal communications, it appears that all of the parties were working with a target date of October 1.

The GC asserted that the Respondent's argument that the October 1 date was a "deadline" was ridiculous and should be disregarded. The Respondent argued that October 1 was a date that the Union itself proposed and the Respondent was willing to go along with. However, by October 1, when the Union had initially proposed bargaining should begin, the Union had done virtually nothing. There were no substantive proposals concerning the various articles of the collective bargaining agreement; and there were no formalized ground rules proposals to get the parties to the bargaining table. From June 9 to October 1, almost four full months, no proposals, other than those contained in the original request to renegotiate, were offered by the Union.

Article 8, Section 8-3 sets forth a specific procedure for the parties to follow if one of the parties desires to renegotiate the collective bargaining agreement. The issue then becomes whether the Respondent, when it did not specifically demand substantive proposals immediately after receipt of the Union's June 9 letter, can later rely on the language of Section 8-3. Even though both parties engaged in some communications regarding proposals for the new collective bargaining agreement, there is never any specific agreement that would change the actual language of the parties' CBA. I find that both parties are bound by the language of their own collective bargaining agreement and the obligations that it imposes on them with regard to renewing and/or renegotiating a new CBA.

The communications between the parties between June 9 and October 1 consist mainly of both parties trying to get the other side to submit proposals. Section 8-3 of the CBA requires the requesting party, in this case, the Union, to have the written notice of the desire to renegotiate the agreement accompanied by the Party's written proposals for negotiation. In this case, the Union failed to do so and I find that the Respondent's actions in refusing to negotiate because no substantive proposals had been submitted to be appropriate. The Respondent's intervening conduct between June 9 and October 1 does not negate its or the Union's obligations under the CBA.

I find that the Respondent's conduct in this matter did not violate section 7116(a)(1) and (5) of the Statute. Therefore, the GC has not established a

violation of the Statute, and I recommend that the Authority adopt the following Order:

ORDER

It is hereby ordered that the complaint be, and hereby is, dismissed.

Issued, Washington, D.C. April 20, 2010

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SUSAN E. JELEN
Administrative Law Judge