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

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS Respondent	
and OVERSEAS FEDERATION OF TEACHERS Charging Party	Case Nos. CH-CA-50593 CH-CA-50694

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 **AUGUST 28, 1996**, and addressed to:

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

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: July 29, 1996
Washington, DC

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

MEMORANDUM DATE: July 29, 1996

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS

Respondent

and Case Nos. CH-CA-50593
CH-CA-50694

OVERSEAS FEDERATION OF TEACHERS

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

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

DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS Respondent	
and OVERSEAS FEDERATION OF TEACHERS Charging Party	Case Nos. CH-CA-50593 CH-CA-50694

Ms. Marian Manlove
For the Respondent

Philip T. Roberts, Esquire
For the General Counsel

Mr. Ernest J. Lehmann
For the Charging Party

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, 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. [1], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent, repudiated the Settlement Agree-ment of April 20, 1995, in violation of §§ 16(a)(5) and (1) of the Statute.

This case was initiated by a charge in Case No. CH-CA-50593, filed on May 2, 1995, alleging violations of §§ 16(a)(1), (2), (5) and (8) of the Statute (G.C. Exh. 1 (a)), and by a charge in Case No. CH-CA-50694, filed on

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[1] For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7116 (a)(5) will be referred to, simply, as, "16(a)(5)".

June 5, 1995, alleging violations of §§ 16(a)(1), (5), (6) and (8) of the Statute (G.C. Exh. 1(c)). The Complaint and Notice of Hearing issued on January 12, 1996 (G.C. Exh. 1 (e)); alleged violation only of §§ 16(a)(5) and (1) of the Statute; and left the date and place of hearing to be determined. By Order dated January 26, 1996, (G.C. Exh. 1 (g)), the hearing was set for March 20, 1996, in Washington, D.C., and a hearing was duly held on March 20, 1996, in Washington, D.C., before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, April 22, 1996, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on motion of Respondent, joined in by General Counsel, to May 22, 1996. Respondent and General Counsel each timely mailed an excellent brief received on May 24, 1996, which

have been carefully considered.[2] Upon the basis of the entire record, I make the following findings and conclusions:

FINDINGS

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[2] General Counsel by Motion dated June 3, 1996, and received on June 6, 1996, has moved to strike portions of Respondent's Brief for the asserted reason that certain assertions as to Payne, Macy, Flowers, Pena, Geer, Ballantine, Silsbee, Himango and Hoffman are not supported, ". . . by any record evidence and in fact, certain of these assertions concern facts which occurred after the hearing was closed. . . ." (General Counsel's Motion, p. 2). Respondent filed a Response To Motion To Strike, dated June 13, 1996, and received on June 18, 1996.

General Counsel's motion is granted in part and is denied in part. First, Payne and Macy were referred to in the transcript and exhibits (Res. Exh. 3, G.C. Exh. 5; Tr. 159, 160). Coyle was referred to (Res. Exh. 13; Tr. 135, 136, 145, 151) but there was no reference in the transcript as to whether he had accepted the proffered return to Lajes. Accordingly, Respondent's assertion that Mr. Coyle had declined will be stricken.

Second, General Counsel is correct that Mr. Flower's retirement during the 93-94 school year could have been presented at the hearing. In this regard the Union was remiss in representing in March, 1996, that he still sought to return to Lajes, whereas, he had been retired two years. Respondent was remiss in failing to check its records. General Counsel is correct that Mr. Geer's disability retirement on June 16, 1996, occurred after the close of the hearing. Nevertheless, because their retirement removes them from further consideration as a "returnee"; and is a status as to which there could be no prejudice to General Counsel, General Counsel's request to delete reference to their retirement is denied.

Third, General Counsel's request to delete the Attachment filed with Respondent's Brief, which is a DODDS Educator Certification to Mr. Masone, dated April, 1992, is granted and the attachment has been removed.

Fourth, General Counsel's Motion to Strike the references to Pena, Ballantine, Silsbee, Himango and Hoffman is granted. Nevertheless, by the process of elimination, it is obvious that these five are the only active returnees to whom an offer has not been shown on the record to have been made.

1. The Department of Defense Dependents Schools (hereinafter, "DODDS" or "Respondent") employs about 6,000 educators (Tr. 119) of whom the Charging Party, Overseas Federation of Teachers, AFT-AFL-CIO (Tr. 19) (hereinafter, "Union"), represents about 700 (Tr. 119). The Union represents teachers in DODDS' Old Mediterranean Region which includes Turkey, Italy, Bahrain (Persian Gulf) and the Azores, which are owned by Portugal (Tr. 19, 119).

2. Lajes is a small island in the nine island archipelago making up the Azores on which the Air Force has had a base since World War II (Tr. 20). To educate children of Air Force personnel stationed on Lajes, DODDS operates two schools: an elementary school - kindergarten through grade 6; and a high school - grades 7 through 12. There are 16 employees in Lajes High School including the Principal (Res. Exh. 2; Tr. 121) and 26 in Lajes elementary school including the Principal (Res. Exh. 3; Tr. 122).

3. The United States' presence in Lajes is governed by a treaty between Portugal and the United States. A protocol to that treaty provided that no American personnel - military or civilian - could stay in Lajes more than three years. Although "on the books", the three year limitation had not been enforced, and waivers were routinely granted, until about 1991 when a dispute erupted over the release of Lajes nationals in a RIF. Incensed, the Portuguese Government invoked the three-year rule and refused to approve the waiver requests submitted during the 1991-92 school year. DODDS, declining to submit to "blackmail", complied with the treaty limitation and removed some 25 teachers who had been in Lajes more than three years, even though the Portuguese Government had relented a bit and had granted some waivers (Tr. 21-22). Because some teachers really wanted to stay in Lajes, the Union sought through negotiations to obtain a contractual obligation to return employees who had been involuntarily removed at the end of the 1991-92 school year. The parties could not agree and the negotiation impasse was taken to the Federal Service Impasses Panel which, on July 1, 1993, ordered the parties to adopt the following provision:

> "Current employees who were involuntarily reassigned from the Lajes Air Base Schools at the end of School Year 1991-92 [hereinafter also referred to as "returnee" or "returnees"] shall be given priority to return to Lajes if: (1) a vacancy occurs; (2) the Employer decides to fill the vacancy; (3) the Employer decides to fill the vacancy through a reassignment of an employee from outside of Lajes; and (4) those employees wishing to return to Lajes are fully qualified and have a

current performance rating of at least fully successful." (FSIP Release No. 346, July 16, 1993)(Case No. 93 FSIP 22).

DODDS, under § 14(c) of the Statute, disapproved the provision; the Union filed a negotiability appeal; and the Authority, in Overseas Federation of Teachers and U.S. Department of Defense Dependents Schools, Mediterranean Region, 49 FLRA No. 12, 49 FLRA 73 (1994), held the provision negotiable and ordered DODDS to rescind its disapproval of the provision.

3. Later, apparently in 1995, a dispute arose over implementation of the FSIP ordered provision and the Union filed a grievance, Case No. E-95-199, and on April 20, 1995, the parties, at Tirania, Italy (Tr. 24), signed the following Settlement Agreement:

"This settlement agreement represents full and final settlement of the issue raised in grievance
E-95-199 and 49 FLRA No. 12.

"1. The Agency agrees that teachers, currently assigned to the Lajes schools and occupying positions which may be filled by former Lajes teachers who were involuntarily reassigned at the end of the 1991-92 school year, will receive the highest priority in district, regional, and world-wide transfers/reassignments out of Lajes. This is done to create vacancies and facilitate the return of former Lajes teachers who were involuntarily reassigned from Lajes at the end of the 1991-92 school year.

"2. The Agency agrees that whenever a position in Lajes becomes vacant and management decides to fill the position from outside of Lajes, a qualified former Lajes teacher with a current fully successful performance rating, who was involuntarily reassigned at the end of the 1991-92 school year, will be reassigned to that position.

"3. The Agency agrees to make every effort to facilitate the return of former Lajes teachers, who were involuntarily reassigned at the end of the 1991-92 school year, to positions in Lajes for which they are qualified.

"4. The Agency agrees to refrain from purposefully establishing positions with

requirements in order to deny former Lajes teachers, who were involuntarily reassigned at the end of the 1991-92 school year, the opportunity to return to Lajes.

"5. The Union recognizes that the Agency reserves the right to determine what positions and requirements are necessary and needed to meet its mission.

"6. The Union agrees to provide the Agency, by close of business Tuesday, April 25, 1995, a list of additional teachers who wish to leave Lajes and where they wish to be reassigned.

"7. The terms of this agreement will be implemented immediately in order that these employees may be considered under the conditions set forth herein in the World Wide Transfer Program now being conducted for SY 95/96.

"8. The terms of this agreement will remain in effect until all of the former Lajes' (sic) employees who were involuntarily reassigned at the end of SY 1991/92 have received an offer to a position in Lajes for which they qualify, regardless of whether or not there is a World Wide Transfer Program."[3] (G.C. Exh. 4).

4. Meanwhile, DODDS, in Washington, D.C., on April 19, 1995, had begun the world-wide transfer program for the 1995-96 school year (Tr. 31, 32). The Overseas Education Association (OEA) was present and represented by Ms. Connie Sullivan; Panama Federation of Teachers (PFT) was present and represented by Mr. Kenneth Younkin; the Union was represented by Ms. Constance M. Kowalski (Tr. 30-31); and DODDS was represented by Mr. Bryce Read, who was in charge of the transfer program, and by Ms. Cheryl D. Vinci, Chief of Recruitment (Tr. 31, 124). Mr. Read retired in the summer of 1995 and Ms. Vinci assumed responsibility for the residual of the transfer program (Tr. 117).

5. There is no dispute, as Ms. Kowalski stated, that transfers are divided into four categories: First, excess teachers; Second, compassionate requests (family, financial, health); Third, teachers assigned to one year areas who had remained more than one year; and Fourth, teachers who just wanted to travel (Tr. 34-35). Nor is there any disagreement

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[3] The Director of the Department of Defense Education Activity decides each year whether there will be a transfer program. It is not an employee entitlement (Tr. 123).

that attention is directed first and exclusively to the First Category, namely, the excess list, inasmuch as, unless placed, these teachers faced termination; however, Ms. Kowalski said that, before beginning the placement of the excess list, they first considered three settlements, ". . . to recognize the fact that there was some settlements that had to be honored." (Tr. 38). There were three settlements, each involving one employee. One settlement involved the Union and it could not be honored, because, ". . . There was no opening at that time . . . ." (Tr. 38). The other two settlements involved OEA, and Ms. Kowalski was not too familiar with them but she thought a Ms. Patricia Venable was placed and the other person could not be placed (Tr. 40). As the settlement involved here did not exist on April 19, 1995, when the transfer program began, obviously it was not, and could not have been, considered before beginning the placement of the excess list.

6. There were 350-400 excess teachers and fewer than 200 openings (Tr. 32, 33). More than 1,000 requests for transfer had been made, overwhelmingly by Category Four "travelers". On April 19, about 1/3 of the excess list had been "gone through" (Tr. 40); on April 20, about 60%; and on April 21st and 22nd the transfer program had been completed (Tr. 128, 144)[4]; however, Ms. Vinci conceded that, ". . . vacancies continued to come in during the rest of the school year and into the summer. People continued to retire and create additional vacancies. So, there were reconsiderations." (Tr. 144).

7. Ms. Kowalski first learned of the settlement on April 20, but did not know its details until after the transfer meeting on the 20th had ended (Tr. 42). She did not receive a copy until the 21st (Tr. 43); and even then couldn't do anything until she got a list of the people who wanted to return to Lajes (Tr. 44), which she received on Saturday, April 22, (G.C. Exh. 5; Tr. 46). She stated that on April 21 she had mentioned to Mr. Read that there was a settlement and asked him what would be done about the Lajes situation and that Mr. Read had replied, ". . . we couldn't really deal with it at that point because we had so many unknowns from it. And it would be dealt with at a later date." (Tr. 43).

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[4] Obviously, not all excess teachers were placed since their numbers greatly exceeded openings available and, of course, not all were qualified for the jobs available. DODDS' list of Placements for the 1995-96 school year, issued May 4, 1995, showed a total of 186 placements (G.C. Exh. 11).

8. Over the weekend, Ms. Kowalski perceived two opportunities to reassign returnees to Lajes as follows[5]: (a) Ms. Elaine Hermann, an excess employee had been "assigned", in the transfer program, to Rota, Spain; Mr. Harry Foley in Lajes had requested a transfer to Rota; and Mr. David A. Gronke, a returnee in Naples, Italy, wanted to return to Lajes. Therefore, send Foley to Rota; Gronke to Lajes; and Hermann to Naples. (b) Mr. Dwight Bowen, an excess employee had been "assigned", in the transfer program, to Okinawa; Ms. Gloria Krom[6], was in Lajes and had requested a transfer to Okinawa; and Ms. Mary Henke-Rebelo, a returnee, was in Naples and wanted to return to Lajes. Therefore, sent Krom to Okinawa; Henke-Rebelo to Lajes; and Mr. Bowen to Naples. On Monday, April 24, 1995, Ms. Kowalski brought these two proposals to the attention of Mr. Read.

Ms. Vinci insisted that Mr. Foley was merely a Category 3 employee (Tr. 129) and, ". . . when we got to Category 3 candidates -- as Mr. Foley is -- there was not an available position. It had been identified for placement by an excess employee. (Tr. 129).

In June, 1995, the Union learned that Ms. Charlotte Gutheil, who had been declared excess at Incirlik, Turkey, and assigned to Korea, had been able to stay at Incirlik. Accordingly, the Union saw this as a further opportunity to return a returnee to Lajes as Mr. Ron Masone, who was in Lajes, had requested a transfer to Korea[7]; and Mary Ann Henke-Rebelo, also part of Ms. Kowalski's proposal "b", above, a returnee in Naples, could be sent back to Lajes. Ms. Marie Sainz-Funaro, President of the Union (Tr. 69), brought this to the attention of Respondent (G.C. Exhs. 12, 13, 14; Tr. 101-103); but on August 8, 1995, the position in

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All parties agree that in each "opportunity", including one brought out by the Union on June 14 and 16, 1995 (G.C. Exhs. 12, 14), each teacher involved was qualified at each step for the position in question.

6
Ms. Krom had entered incorrect numbers for her teaching certifications on her transfer request so that there was no vacancy for the only legitimate category shown (Tr. 127); however, her corrected application (Res. Exh. 7) was received on April 24, 1995 (Tr. 128).

7
Mr. Masone had not listed "health" as a teaching category for which he was qualified, and the category for which Ms. Gutheil had been designated to fill in Korea; but Mr. Masone was qualified for "health" and the Union informed Respondent of his "health" qualification (Tr. 156).

Korea was filled by Mr. James Ashley, an excess employee in Germany (Tr. 109).

Further, in October, 1995, Mr. Dan Bose, a returnee, whose wife, Cynthia Ellis-Bose, had been returned to Lajes in June, 1995 (G.C. Exh. 16; Res. Exh. 4), was still in Incirlik, Turkey, and became aware that there was another opening in Korea for a PE teacher, which Mr. Ron Masone was, and, as Mr. Masone had requested a transfer to Korea, he could have filled this position (Tr. 110); but Respondent, the Union asserted, had filled this position with a stateside hire (Tr. 110). Had Mr. Masone been assigned to Korea, Mr. Dan Bose could have been returned to Lajes.

Respondent stated that there was a vacancy in Korea in Mr. Masone's category [at Tobu] but, ". . . that had been identified for placement by an excess employee. So, when we got to individuals in Mr. Masone's category, the position was not available. It had been identified for placement by an excess employee." (Tr. 131). Ms. Vinci further stated that the "vacancy" for an elementary PE position at Osan, Korea, was subject to a request to return an employee with administrative re-employment rights and was not considered a vacancy (Tr. 131). Nevertheless, Ms. Sainz-Funaro stated that about six weeks into the school year, DODDS recruited a new hire stateside to fill that position (Tr. 110). In its Brief, DODDS states, "As Ms. Vinci testified, the vacancy in Osan did not exist during the transfer program because it had been slated to accommodate the return of an employee on Adminis-trative Reemployment Rights (Transcript, pg. 131). However, late in the summer that individual notified DoDDS that he was no longer interested in exercising his return rights. Therefore on August 8, 1996 (sic), management exercised it (sic) prerogative and hired from stateside since it was only two weeks before the start of the school year." (DODDS' Brief, pp. 11-12).

9. In December, 1995, a vacancy occurred at Lajes; but, instead of returning a returnee, i.e., Mr. James Coyle who was in Gaeta, Italy, an excess employee from Incirlik, Turkey, was reassigned to Lajes (Tr. 110-111; 135). Obviously, had Mr. Coyle been returned to Lajes, the excess teacher from Incirlik could have been sent to take his place at Gaeta.

10. DODDS did return two returnees, Ms. Christine Deisher (Res. Exh. 5) and Ms. Cynthia Elaine Ellis-Bose (Res. Exh. 4, G.C. Exh. 16), to Lajes during the 1995-96 transfer program (Tr. 95-96, 125-126, 156). In addition, Ms. Karen Randolph declined an offer to return to Lajes in 1995 (Tr. 134, 135).

Previously, Ms. Dorothy Macy and Mr. Steve Payne had been returned to Lajes (G.C. Exh. 5, Res. Exh. 3; Tr. 159, 160). As noted above in n.2, I take notice that Mr. Richard Flowers retired during the 1993-94 school year; and that Mr. Frank Geer retired on disability June 16, 1996.

11. On March 18, 1996, DODDS offered reassignment to Lajes to returnees: Mr. Daniel Bose (Res. Exh. 10; Tr. 132); Ms. Mary Ann Henke-Rebelo (Res. Exh. 11; Tr. 133); and Mr. David A. Gronke (Res. Exh. 12; Tr. 133). On March 19, 1996, DODDS offered reassignment to Lajes to returnee James A. Coyle (Res. Exh. 13; Tr. 133).

Consequently, offers to return have been made, as shown on the record, to all active employees on General Counsel Exhibit 5 except:

Mr. Keith Ballantine
Ms. Tomi Silsbee
Mr. Gary Himango
Ms. Janeen Hoffman
Ms. Gloria Pena

12. DODDS did not make the transfers requested by the Union. Rather, it adhered to its "assignment" of excess employees and sent a notice of transfer to Ms. Hermann on April 26, 1995 (Res. Exh. 14; Tr. 138) to go to Rota; and Mr. Bowen was sent to Okinawa (G.C. Exh. 11). Ms. Hermann had not requested to go to Rota, nor had Mr. Bowen requested to go to Okinawa (Tr. 51-53). It is certainly possible that some excess teacher had submitted a request, but the record does not show, or even suggest, that in going through the excess list any consideration was given to the desires of the teacher to be placed. They began with the longest service computation date (Tr. 37) and looked for job openings that matched qualifications (Tr. 57), but did apply personal logic in assigning them (Tr. 52).

Ms. Vinci said the transfer program ended effectively on Saturday, April 22nd (Tr. 128) and, ". . . to undo identified placements would create a ripple effect . . ."; that there are "extenuating circumstances" (Tr. 136); but conceded that the only "extenuating circumstances" involved in the Union's requests would have been that, ". . . you would have three transfers instead of one" (Tr. 141). Ms. Sainz-Funaro was told by Mr. Ed Turner, Chief of Staffing (Tr. 82), when she again suggested the moves Ms. Kowalski had put forward to Mr. Read, ". . . no, we're placing excess employees first; we're not going to deal with that settlement agreement" (Tr. 89); that, ". . . He wasn't about to change anything." (Tr. 89).

CONCLUSIONS

Not every breach of contract is a violation of the Statute, but repudiation of an agreement does violate the Statute. Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, 40 FLRA 1211, 1218 (1991). To determine whether a failure or refusal to honor an agreement constitutes a repudiation, the Authority has stated,

> "We find that the nature and scope of the failure or refusal to honor an agreement must be considered, in the circumstances of each case, in order to determine whether the Statute has been violated. Because the breach of an agreement may only be a single instance, it does not necessarily follow that the breach does not violate the Statute. That suggests that a single breach of an agreement, no matter how significant, would not violate the Statute. Rather, it is the nature and scope of the breach that are relevant. Where the nature and scope of the breach amount to a repudiation of an obligation imposed by the agreement's terms, we will find that an unfair labor practice has occurred in violation of the Statute." (id., at 1218-1219).

In Department of the Air Force, 375th Mission Support Squadron, Scott Air Force Base, Illinois, 51 FLRA 858 (1996), the Authority further commented,

> ". . . two elements are examined in analyzing an allegation of repudiation: (1) the nature and scope of the alleged breach of an agreement (i.e., was the breach clear and patent?); and (2) the nature of the agreement provision allegedly breached (i.e., did the provision go to the heart of the parties' agreement?). The examination of either element may involve an inquiry into the meaning of the agreement provision allegedly breached. However, for the reasons that follow, it is not always necessary to determine the precise meaning of the provision in order to analyze an allegation of repudiation.4/
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> 4/ . . . to the extent that IRS and other precedent suggest that it is always necessary to determine the precise meaning of an agreement provision in order to resolve an allegation that a respondent repudiated that

provision, we will no longer follow that precedent." (id., at 862)

"Specifically, with regard to the first element, it is necessary to show that a respondent's action constituted 'a clear and patent breach of the terms of the agreement[.]' Cornelius v. Nutt, 472 U.S. at 664 . . . . In those situations where the meaning of a particular agreement term is unclear, acting in accordance with a reasonable interpretation of that term, even if it is not the only reasonable interpretation, does not constitute a clear and patent breach of the terms of the agreement." (footnote omitted)

With regard to the second element, the Authority stated,

". . . With regard to the second element, if a provision is not of a nature that goes to the heart of the parties' collective bargaining agreement, then it is not necessary to determine the meaning of the provision because, even if the respondent breached the parties' agreement, that breach would not amount to a repudiation." (id., at 863).

Where, as here, a respondent raises as a defense that a specific provision of the parties' collective bargaining agreement permitted the action alleged to constitute an unfair labor practice, the meaning of the agreement must be resolved. Internal Revenue Service, Washington, D.C., 47 FLRA 1091, 1103 (1993).

A. The Controlling Provisions Of The Agreement.

The original provision ordered by the FSIP was that,

"Current employees who were involuntarily reassigned from the Lajes Air Base Schools at the end of School Year 1991-92 shall be given priority to return to Lajes if: (1) a vacancy occurs; (2) the Employer decides to fill the vacancy; (3) the Employer decides to fill the vacancy . . . from outside of Lajes; and (4) those employees wishing to return to Lajes are fully qualified and have a current performance rating of at least fully successful." (FSIP Release No. 346, July 16, 1993)(Case No. 93 FSIP 22).

The record shows that some employees were, indeed, returned to Lajes; but returns were painfully slow; and

"returnees" (i.e., those who had been involuntarily reassigned at the end of the 1991-92 school year and wanted to return to Lajes) were not assured of the right to fill Lajes vacancies. The settlement agreement of April 20, 1995, addressed these concerns principally in two ways: First, the right of returnees to vacant positions in Lajes which the Agency fills from outside Lajes was made absolute as follows:

> "2. The Agency agrees that whenever a position in Lajes becomes vacant and management decides to fill the position from outside of Lajes, a qualified former Lajes teacher with a current fully successful performance rating, who was involuntarily reassigned at the end of the 1991-92 school year, will be reassigned to that position." (G.C. Exh. 4)(Emphasis supplied).

Gone is the original provision, ". . . shall be given priority to return" and in its place the directive language, ". . . will be reassigned to that position."

Second, to speed-up the return of returnees, the parties encouraged more Lajes vacancies by giving priority consideration to requests of Lajes teachers for transfer if their transfer would facilitate the return of a returnee. Thus, the settlement provided,

> "1. The Agency agrees that teachers, currently assigned to the Lajes schools and occupying positions which may be filled by former Lajes teachers who were involuntarily reassigned at the end of the 1991-92 school year, will receive the highest priority in district, regional, and world-wide transfers/reassignments out of Lajes. This is done to create vacancies and facilitate the return of former Lajes teachers who were involuntarily reassigned from Lajes at the end of the 1991-92 school year." (G.C. Exh. 4).

These two provisions go to the heart of the parties settlement agreement. Other provisions complement these provisions, e.g., "3. The Agency agrees to . . . facilitate the return of former Lajes teachers . . . to positions in Lajes for which they are qualified."; "4. The Agency agrees to refrain from purposefully establishing positions with requirements in order to deny former Lajes teachers . . . the opportunity to return to Lajes"; "6. The Union agrees to provide . . . a list of additional teachers who wish to leave Lajes and where they wish to be reassigned."; "7. The terms of this agreement will be implemented immediately in

order that these employees may be considered under the conditions set forth herein in the World Wide Transfer Program now being conducted for SY 95/96"; and "8. The terms of this agreement will remain in effect until all of the former Lajes employees . . . have received an offer to a position in Lajes for which they qualify . . . ." (G.C. Exh. 4).

Respondent views another provision of the settlement agreement as going to the heart of their agreement, namely, paragraph 5 which provides,

> "5. The Union recognizes that the Agency reserves the right to determine what positions and requirements are necessary and needed to meet its mission." (G.C. Exh. 4).

I do not consider this provision as going to the heart of the agreement; but, without doubt, as construed by Respondent it not only would go to the heart of the agreement, it would be the heart of the agreement. Indeed, Respondent's treatment of paragraph 5 would be very much like asserting the right to trump when playing a bridge hand and the contract is no-trump. Because Respondent claims paragraph 5 as a defense to the alleged repudiation of the settlement agreement, it is necessary to determine the meaning of the agreement, Internal Revenue Service, Washington, D.C., supra. Paragraph 5 is not ambiguous and there is nothing in the language of paragraph 5 that supports Respondent's interpretation that its reserved right, ". . . to determine what positions and requirements are necessary and needed to meet its mission" negated invocation of the request to transfer provisions of paragraph 1 of the agreement. To the contrary, the plain and literal meaning of paragraph 5 is that Respondent has the right to determine the positions and the requirements for those positions that are necessary and needed for it to meet its mission. It is a clarification of paragraph 4 ("The Agency agrees to refrain from purposefully establishing positions with requirements . . . to deny former Lajes teachers . . . the opportunity to return . . . .") The only witnesses called who took part in the negotiation of the settlement agreement were: Mr. Ernest J. Lehmann, European Director of the Union who signed the agreement on behalf of the Union; and Ms. Sainz-Funaro, President of the Union. Mr. Lehmann testified concerning his understanding of paragraph 5 as follows:

> "THE WITNESS: It says that you have -- the management has the right to determine what positions and requirements are necessary and

needed to meet its mission. In other words, you can -- you establish the positions, basically.

"The implication is that you do it in a fair and reasonable manner. You don't manipulate." (Tr. 28).

Ms. Sainz-Funaro was not asked the meaning of paragraph 5; but her testimony concerning discussions with Mr. Bransford, who signed the agreement on behalf of Respondent (G.C. Exh. 4; Tr. 24), before and after completion of negotiation of the agreement, show that it was contemplated that, ". . . there would be some openings that could be filled by some people currently in Lajes . . . They knew there was an opening in Okinawa and they knew there would be -- be an opening in Rota . . . ." (Tr. 73, 74, 75; G.C. Exhs. 8, 9). Accordingly, I find that paragraph 5 does no more than recognize Respondent's right to determine positions and the requirements for those positions in order for it to fulfill its mission.

B. Respondent Repudiated Paragraph 2 Of The Agreement In December, 1995.

In December, 1995, a vacancy occurred at Lajes.[8] As set forth above, paragraph 2 of the settlement agreement made it mandatory that when a position in Lajes becomes vacant and Respondent elects to fill it from outside of Lajes, a returnee, ". . . will be reassigned to that position." This is wholly without regard to when, how or why the vacancy has occurred. As noted in footnote 8, I reject Respondent's assertion at the hearing that no vacancy existed at Lajes; but even if Respondent's assertion is deemed correct, the moment the authorization was transferred to Lajes to create a vacancy, paragraph 2 of the settlement agreement attached, mandating the reassignment of a returnee. By placing the excess Incirlik employee at Lajes,

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[8] Respondent ignored the December, 1995, incident in its Brief. At the hearing, Ms. Vinci had testified that there was not a vacancy in Lajes; that when a teacher became excess at Incirlik, ". . . The district superintendent moved that employee to Lajes because she was excess . . . . So, prior to the move of the space, the authorization to Lajes -- a vacancy did not exist there." (Tr. 135). I do not find this bit of legerdemain convincing. An excess employee is one, as Respondent concedes (Tr. 135), not needed. Certainly, the excess teacher carries no hiring authorization that could be transferred to create a vacancy. If so, why incur the expense of a transfer - simply "create" a vacancy at Incirlik. I find that a vacancy existed at Lajes.

rather than Mr. James Coyle, Respondent repudiated paragraph 2 of the settlement agreement. Had Mr. Coyle been returned to Lajes, obviously, the excess teacher from Incirlik could have been sent to take his place at Gaeta. The fact that Respondent, on March 19, 1996, offered Mr. Coyle reassignment to Lajes for the 1996-97 school year (Res. Exh. 13), does not excuse its earlier repudiation of paragraph 2 of the settlement agreement.

C. Respondent Repudiated Paragraph 1 Of The Agreement During Its World-Wide Transfer Program For The 1995-96 School Year.

At the outset, I fully agree with Respondent in several respects, as follows:

> 1. The purpose of the settlement agreement was to facilitate the return of employees who had been involuntarily reassigned from Lajes at the end of the 1991-92 school year. (Respondent's Brief, p. 5).
>
> 2. Paragraph 1 of the settlement agreement applies only during the world-wide transfer program. (Respondent's Brief, p. 5).
>
> 3. Respondent is not obligated by paragraph 1 of the settlement agreement to check all vacancies in the school system, year round, with the transfer wishes of employees currently assigned to Lajes (Respondent's Brief, p. 5).

As the settlement agreement did not exist at the time Respondent began the 1995-96 Transfer Program, obviously, it was not considered at the outset as three other settlements were (Tr. 38-40). It is not questioned that Respondent properly proceeded with the placement of excess employees. Indeed, the Union, as well as the other two labor organizations present, fully recognized that placement of excess employees was the first order of business and participated in completing the task which, as noted, resulted in the placement only of 186 of 350-400 excess teachers.

When the "plotting of the people to the vacancies" (Tr. 144) was completed on Saturday, April 22, 1995, there were no further vacancies; but paragraph 1 of the settlement agreement is not premised on vacancies. To the contrary, it states that teachers in Lajes, "will receive the highest priority in . . . transfers/ reassignments out of Lajes . . . to create vacancies and facilitate the return" of returnees (Emphasis supplied).

The "placing" of excess employees at this point was no more than, as Ms. Vinci stated, "plotting of the people to the vacancies"; no excess employee had been notified of his/her "placement"; and the record is devoid of any evidence that any excess employee, and in particular Ms. Elaine Hermann and Mr. Dwight Bowen, had requested transfer to the location where placed. Indeed, the record shows that Ms. Hermann, excessed at Nuernberg, Germany, was, ". . . not very happy about being excessed out of Germany" and her requests, "were all for Germany and for Europe." (Tr. 52). At this point, the Union, on April 24, 1995, presented to Mr. Read, two "matches" which would return two returnees, Mr. David Gronke and Ms. Mary Ann Henke-Rebelo, to Lajes, as follows:

(a) Ms. Hermann, the excess employee at Nuernberg, Germany, who had been "plotted" to Rota, Spain, would, instead, be transferred to Naples; Mr. Harry Foley, who was in Lajes, had requested a transfer to Rota, so he would be transferred to Rota; and Mr. David Gronke, a returnee, in Naples would be returned to Lajes.

(b) Mr. David Bowen, the excess employee "plotted" for Okinawa, would, instead, be transferred to Naples; Ms. Gloria Krom, who was in Lajes, had requested a transfer, inter alia, to Okinawa, so she would be transferred to Okinawa; and Ms. Mary Ann Henke-Rebelo, a returnee, in Naples would be returned to Lajes.[9]

The transfers of Mr. Foley and of Ms. Krom were not transfers for the gratification of their desires but were transfers in accordance with paragraph 1 of the settlement agreement to create vacancies for the return of returnees.

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[9] General Counsel presented evidence that in June, 1995, Ms. Charlotte Gutheil, who had been declared excess at Incirlik, and "plotted" to Korea, had been able to stay at Incirlik. Accordingly, that Mr. Ron Masone, who was in Lajes and had requested Korea, be transferred to Korea; and Ms. Henke-Rebelo, a returnee, be returned to Lajes. This vacancy in Korea was filled by Mr. James Ashley, another excess employee from Germany (Tr. 109, 131); and Respondent asserted that a second vacancy at a different school in Korea was held for an employee with administrative reemployment rights and was not considered a vacancy (Tr. 131).

As this involves the "return" of Ms. Henke-Rebelo, resolution of this dispute is unnecessary and would be duplicitous. Accordingly, I express no opinion as to whether the transfer of Mr. Masone to create an opening in Lajes for Ms. Henke-Rebelo would or would not have been in violation of the settlement agreement.

There had to be a match with the requirements and qualifications of the excess employee, the opening to which the excess employee had been "plotted", the employee from Lajes, who would move to the plotted space of the excess employee, and the returnee, into whose slot the excess employee would be moved. Contrary to Respondent's assertion, while the first phase of plotting people to the vacancies had been completed on April 22, 1995, the transfer program for the 1995-96 school year had not been completed; Ms. Kowalski met further with Mr. Read on Monday, April 24, 1995, at which time she gave him the two "matches" set forth above; and a further transfer meeting was set for May, 1995. It is true that Ms. Krom's original transfer request had shown incorrect numbers for her teaching qualifications, but her corrected application was received by Respondent on April 24, 1995 (Res. Exh. 7; Tr. 128). On April 24, 1995, neither Ms. Hermann nor Mr. Bowen had been informed of the locations to which they had been "plotted" and Ms. Vinci admitted, albeit reluctantly, that the only extenuating circumstances were that, ". . . that would've involved three permanent change of station --" Tr. 140), i.e., you would have three transfers instead of one (Tr. 141). Congress may enact laws an agency considers bad, but, "Congress has put down its pen, and we can neither rewrite Congress' words nor call it back 'to cancel half a Line.' Our task is to interpret what Congress has said. . . ." Director, Office of Workers' Compensation Programs, United States Department of Labor v. Rasmussen, 440 U.S. 29, 47 (1979). In like manner, Respondent may well view the settlement agreement improvident and its negotiators as having been outmaneuvered; nevertheless, the settlement agreement is lawful and it is binding on Respondent whether it likes its terms or not.

With full knowledge of the settlement agreement, of the Foley and Krom transfer requests, and before notification of excess employees Hermann and Bowen of their plotted assignments,[10] Respondent intentionally and purposefully refused to accord Foley and Krom the "highest priority in . . . world-wide transfers/reassignments . . . to create vacancies" for the return of returnees Gronke and Henke-Rebelo in accordance with paragraph 1 of the settlement agreement. In May, 1995, Mr. Ed Turner, Chief of Staffing, told President Sainz-Funaro that, ". . . I can't deal with that settlement agreement. That has nothing to do with me. I'm in staffing. That's Labor Relations." (Tr. 82, 88); that, ". . . we're placing excess employees first; we're not

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Nothing in the record establishes that notice, and/or offer, of a posting would bar Respondent changing that posting, especially where, as here, the relocations were for the next school year beginning some months in the future.

going to deal with that settlement agreement" (Tr. 89); that Hermann and Bowen, having been placed, ". . . they're no longer excess -- they're gone. They're -- that's done. He wasn't about to change anything." (Tr. 89). Ms. Vinci stated that the transfer program was completed on Saturday, April 22 and Respondent wouldn't change anything that had been done as of the 22nd (Tr. 144, 145); she first asserted that, ". . . to undo identified placements would create a ripple effect, and you'd have to look at many factors. . . ." (Tr. 136), but, as noted above, admitted that the only extenuating circumstance was that there would be three transfers instead of one. But this was specifically contemplated by the settlement agreement, namely, that a teacher in Lajes would be transferred to create a vacancy for the return of a returnee. Of course, the excess employee must be transferred in any event. "Highest priority" does not mean a right of first refusal; and it does not mean that it permits the displacement of an excess employee. Rather, as all parties agree, in the transfer program, excess employees are first "plotted" into vacancies. Then, if it is shown by the Union that there is a three-way match, paragraph 1 of the settlement agreement, by according the "highest priority" to the transfer request of the employee in Lajes would permit that employee to move to the plotted slot for the excess employee and the excess employee would move to the slot vacated by the returnee. The excess employee is never displaced in the sense of being deprived of a job; but only the initial plotting of the excess employee to one vacancy is shifted to another vacancy, in order, in accordance with the settlement agreement, that a returnee be returned to Lajes.

D. Respondent Did Not Repudiate Paragraph 1 Of The Agreement By NOT TRANSFERRING MR. MASONE TO KOREA IN OCTOBER, 1995.

As found above, paragraph 1 of the settlement agreement applies only during the transfer program. The agreement is unclear as to duration of the transfer program; however, it is agreed by all parties that it begins in the March-April period each year (Tr. 31, 32, 123). I do not agree with Ms. Vinci's assertion that the transfer program ended on April 22, 1995, for the reason that the record shows that further meetings were held on April 24, 1995, and were scheduled for May, 1995, and, even Ms. Vinci, conceded that April 22, 1995, constituted only the "first round" of the transfer program and which con-tinued into the summer (Tr. 144). Nevertheless, Respondent's interpretation that the transfer program ended during the summer recess, seasonably before the beginning of the school year, if not compelled by the evidence and testimony, is reasonable, is consistent with the agreement and is consistent with the

record. As the Authority stated, in Department of The Air Force, 375th Mission Support Squadron, Scott Air Force Base, Illinois, supra, ". . . where the meaning of a particular agreement term is unclear, acting in accordance with a reasonable interpretation of that term, even if it is not the only reasonable interpretation, does not constitute a clear and patent breach of the terms of the agreement. . . ." (51 FLRA at 862). Accordingly, the transfer program had ended before Respondent, "about six weeks into the school year" (Tr. 110), filled the position in Osan, Korea, and Respondent had no obligation under paragraph 1 of the settlement agreement to grant Mr. Masone's request for transfer from Lajes to create a vacancy in in Lajes for the return of Mr. Dan Bose. Moreover, before the Osan, Korea, position was filled, it had been slated for the return of an employee with Administrative Reemployment rights and no vacancy existed during the transfer program. (Tr. 131).

REMEDY

Two discrete provisions constitute the heart of the settlement agreement. First, the provision (paragraph 2) mandating that vacancies in Lajes, to be filled from outside Lajes, be offered to qualified returnees. Respondent repudiated this provision in December, 1995, by failing and refusing to offer to return Mr. Coyle to Lajes. Second, the provision (paragraph 1) granting highest priority to transfer requests of Lajes employees to create vacancies for returnees.[11] Respondent repudiated this provision during the transfer program by refusing to make the matching transfers found by the Union and thereby failing and refusing to return Mr. Gronke and Ms. Henke-Rebelo to Lajes for the 1995-96 school year. Offers have been made to return Mr. Coyle (Res. Exh. 13), Mr. Gronke (Res. Exh. 12) and Ms. Henke-Rebelo (Res. Exh. 11) to Lajes for the 1996-97 school year. Because Respondent's repudiation of its settlement agreement to return returnees to Lajes was knowing and intentional, I agree with General Counsel that Messrs. Coyle and Gronke and Ms. Henke-Rebelo should be made whole for the loss incurred by them by its repudiation. In this regard, General Counsel notes that Lajes teachers receive 5% hardship pay and, had Mr. Gronke and Ms. Henke-Rebelo been returned to Lajes in accordance with the

[11] As indicated previously, the purpose of the settlement agreement was to return returnees to Lajes - not to fulfill the desires of Lajes teachers to transfer. Indeed, by its terms, the settlement agreement gave "highest priority" only for the purpose of creating a vacancy in Lajes for the return of a returnee. Consequently, Mr. Foley and Ms. Krom incurred no loss for which they are entitled to recompense.

settlement agreement, they would have received the hardship pay for the entire 1995-96 school year and Mr. Coyle would have received the hardship pay from December, 1995, through the end of the 1995-96 school year. In like manner, had Mr. Gronke and Ms. Henke-Rebelo been returned to Lajes in accordance with the settlement agreement, each would have received two Environmental Morale Leave (EML) flights as Lajes employees instead of one as Naples employees. In view of the fact that Mr. Coyle would not have been returned to Lajes until sometime in December, he might, or might not, have been entitled to two EML flights since he would have been in Lajes less than a complete school year. Other matters suggested by General Counsel, such as: lower cost of living in Lajes; and maintenance costs of property in Lajes are not ". . . equal to all or any part of the pay, allowances, or differentials . . . which the employee normally would have earned or received during the period if the personnel action had not occurred. . . ." (5 U.S.C. § 5596(b)(1)(A)(i)) and are not recoverable.

General Counsel also asks for posting at, ". . . DODDS facilities worldwide." (General Counsel's Brief, p. 18). I do not agree. Charging Party represents less than 12% of Respondents educators and only in the Old Mediterranean Region; and the Charging Party is principally, if not exclusively, concerned with compliance with this Order and enforcement of its settlement agreement. Accordingly, posting will be limited to the Charging Party's bargaining unit.

Having found that Respondent repudiated the settlement agreement of April 20, 1995, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.29 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.29, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Department of Defense Dependents Schools, shall:

1. Cease and desist from:

(a) Repudiating the settlement agreement entered into with the Overseas Federation of Teachers on April 20, 1995, requiring, inter alia, that: (i) when a position in Lajes becomes vacant and Respondent decides to fill it from outside Lajes, a qualified former Lajes teacher, who was involuntarily reassigned at the end of the 1991-92 school year (hereinafter, "returnee" or "returnees"), with a current fully successful performance rating will be reassigned to that position; and (ii) it give highest

priority to transfer requests of teachers in Lajes which will create vacancies for the return of returnees to Lajes.

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

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

(a) Comply fully with the provisions of the settlement agreement entered into on April 20, 1995, with the Overseas Federation of Teachers.

(b) Make Mr. David Gronke and Ms. Mary Ann Henke-Rebelo whole for the loss incurred by them for the 1995-96 school year as the result of Respondent's repudiation of the settlement agreement and its failure and refusal to return them to Lajes, pursuant to paragraph 1 of the settlement agreement and the matching transfers found by the Overseas Federation of Teachers, specifically to include the 5% hardship pay for the entire 1995-96 school year which they would have received as Lajes teachers; and one additional EML flight for each, to which they would have been entitled as Lajes teachers.

(c) Make Mr. James Coyle whole for the loss suffered by him from the date in December, 1995, when Respondent repudiated paragraph 2 of the settlement agreement by filling a vacancy in Lajes from outside without offering to return Mr. Coyle to Lajes, specifically by paying him the 5% hardship pay, from the date in December, 1995, that it filled the vacancy, through the end of the 1995-96 school year; and, if Mr. Coyle would have been entitled from December, 1995, through the end of the 1995-96 school year to two EML flights, provide Mr. Coyle one additional EML flight.

(d) Five returnees, Gloria Pena, Keith Ballantine, Tomi Silsbee, Gary Himango and Janeen Hoffman, are the only remaining active returnees to whom the record has shown no offer to return to Lajes. Until an offer to return to Lajes had been made to each remaining active returnee, Respondent shall: (i) fill no vacancy in Lajes from the outside without offering to return a qualified returnee; and (ii) during the transfer program, implement "matches" brought to its attention by the Overseas Federation of Teachers which would permit the return of a returnee to Lajes.

(e) Post at each of its facilities represented by the Overseas Federation of Teachers, the exclusive representative of certain of its employees, 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 Director, Department of Defense Dependents Schools, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where Notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

(f) Pursuant to § 2423.30 of the Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director, of the Chicago Regional, Federal Labor Relations Authority, 55 West Monroe, Suite 1150, Chicago, Illinois 60603-9729, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: July 29, 1996
Washington, DC

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that Department of Defense Dependents Schools, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT repudiate the settlement agreement entered into with the Overseas Federation of Teachers on April 20, 1995, requiring, inter alia, that: (i) when a position in Lajes becomes vacant and we decide to fill it from outside Lajes, a qualified former Lajes teacher, who was involuntarily reassigned at the end of the 1991-92 school year (hereinafter, "returnee" or "returnees"), with a current fully successful performance rating will be reassigned to that position; and (ii) we give the highest priority to transfer requests of teachers in Lajes which will create vacancies for the return of returnees to Lajes.

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

WE WILL comply fully with the provisions of the settlement agreement entered into on April 20, 1995, with the Overseas Federation of Teachers, the exclusive representatives of certain of our employees (hereinafter, "Union").

WE WILL MAKE WHOLE: MR. DAVID GRONKE and MS. MARY ANN HENKE-REBELO for the loss incurred by them for the 1995-96 school year as the result of our repudiation of the settlement agreement and our failure and refusal to return them to Lajes, pursuant to paragraph 1 of the settlement agreement and the matching transfers found by the Union, specifically to include the 5% hardship pay for the entire 1995-96 school year which they would have received as Lajes teachers; and one additional EML flight for each, to which they would have been entitled as Lajes teachers.

WE WILL MAKE WHOLE: MR. JAMES COYLE for the loss suffered by him from the date in December, 1995, that we, in repudiation of paragraph 2 of the settlement agreement, filled a vacancy in Lajes from outside without offering to return Mr. Coyle to Lajes, specifically by paying him the 5% hardship pay, from the date in December, 1995, that we

filled the vacancy, through the end of the 1995-96 school year; and, if Mr. Coyle would have been entitled from December, 1995, through the end of the 1995-96 school year to two EML flights, provided Mr. Coyle one additional EML flight.

WE WILL NOT, until the five remaining active returnees, Pena, Ballantine, Silsbee, Himango and Hoffman, have been offered reassignment to Lajes: (i) fill any vacancy in Lajes from the outside without offering to return a qualified returnee; and (ii) refuse during the transfer program to implement "matches" brought to our attention by the Union.

(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, Chicago Region, Federal Labor Relations Authority, 55 West Monroe, Suite 1150, Chicago, Illinois 60603-9729, and whose telephone number is: (312) 353-6306.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case Nos. CH-CA-50593, 50694, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Ms. Marian Manlove
Labor Relations Specialist
Department of Defense Dependent Schools
4040 North Fairfax Drive
Arlington, VA 22203

Philip T. Roberts, Esquire
Federal Labor Relations Authority
55 West Monroe, Suite 1150
Chicago, IL 60603-9729

Ernest J. Lehmann, European Director
Overseas Federation of Teachers
Verona Elementary School
CMR 428
Box 1276
APO AE 09628

REGULAR MAIL:

Ms. Marie Sainz-Funaro
Overseas Federation of Teachers
Unit 31301 Box 65
APO AE 09613

Dated: July 29, 1996
Washington, DC