



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

OALJ 16-10

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, AFL-CIO, LOCAL 1815

RESPONDENT

AND

Case No. AT-CO-12-0582

DEPARTMENT OF THE ARMY, U.S. ARMY  
AVIATION CENTER OF EXCELLENCE  
FORT RUCKER, ALABAMA

CHARGING PARTY

Brent S. Hudspeth  
For the General Counsel

Mark Wonders  
For the Respondent

Captain Marina Loshak  
For the Charging Party

Before: RICHARD A. PEARSON  
Administrative Law Judge

**DECISION**

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (the Authority or FLRA), 5 C.F.R. part 2423.

On August 20, 2012, the Department of the Army, U.S. Army Aviation Center of Excellence, Fort Rucker, Alabama (the Charging Party or Agency), filed an unfair labor practice charge against the American Federation of Government Employees, AFL-CIO, Local 1815 (the Respondent or Union). GC Ex. 1(a). After investigating the charge, the Regional Director of the Atlanta Region of the FLRA issued a Complaint and Notice of

Hearing on June 21, 2013, and an Amended Complaint and Notice of Hearing on June 28, 2013, on behalf of the General Counsel (GC) of the FLRA, alleging that the Union violated § 7116(b)(5) and (8) of the Statute by failing to be represented at negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment, and by refusing to execute a written document embodying the terms agreed upon in negotiations. GC Exs. 1(b) & 1(c). In its Answer to the Complaint, the Respondent admitted some of the factual allegations, but denied that it committed an unfair labor practice. GC Ex. 1(d).

A hearing upon the matter was conducted on August 27, 2013, in Ozark, Alabama. At the hearing, all parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The GC, Charging Party, and Respondent filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, I find that the Respondent violated the § 7116(b)(5) and (8) and that it must execute the parties' successor collective bargaining agreement. In support of these determinations, I make the following findings of fact, conclusions of law, and recommendations.

#### FINDINGS OF FACT

The Charging Party is an agency within the meaning of § 7103(a)(3) of the Statute. The Respondent is a labor organization within the meaning of § 7103(a)(4) of the Statute, and is the exclusive representative of a unit of employees appropriate for collective bargaining at the U.S. Army Aviation Center of Excellence, located at Fort Rucker, Alabama. At all material times, J. Emerson Garrison served as President of the Union and has served in that capacity since 1998.

The Agency is one of eight Army commands located on Fort Rucker, the largest helicopter training installation in the world. Jt. Ex. 2 at 1. The Agency's primary mission is to train military, civilian and international personnel in aviation-related and leadership skills. The Union represents approximately 1,800 professional and nonprofessional employees in these commands. *Id.*

In early 2011, the Agency and the Union began bargaining for ground rules to govern negotiations for a successor to their 2002 collective bargaining agreement (CBA). Garrison served as the Union's Chief Negotiator, and Justin Mitchell served in that capacity for the Agency. Tr. 31. The ground rules negotiations culminated with an agreement on March 11, 2011. Jt. Ex. 1. The ground rules agreement stated, as relevant here, that the Chief Negotiator for each party would serve as the point of contact for the duration of the negotiations, and that the person so designated had the authority to negotiate and enter into a binding agreement on all matters subject to the negotiations. *Id.* at 1. When they agreed upon a proposal, "[e]ach individual section will be initialed and dated by the parties' Chief

Negotiators . . . .” *Id.* at 2. Moreover, “[o]nce an agreement is reached and initialed by both parties on any article/section of the Agreement, negotiations on that article/section will be considered final subject only to reopening by mutual consent of the parties.” *Id.*

The ground rules agreement did not mention anything about the CBA being submitted to the Union’s membership for a ratification vote. It did, however, state that “at the completion of the negotiations, the Employer will assemble a legible form of the completed Agreement within five (5) working days for review by both parties. Execution will take place no later than fourteen (14) days after completion of negotiations.” *Id.* at 3.

The substantive negotiations for the successor CBA took place between April 2011 and May 2012. In addition to Mr. Mitchell, the Agency negotiating team consisted of Herbert Burgess, John Arnold and Major Jennifer Clark, while Emilee Smith kept track of what language had been agreed upon and what had been tabled. Abdel Bilal, Henry Mayer, and Stephen Rohr served with Mr. Garrison on the Union team. Tr. 33, 39. The first negotiation session occurred on April 19, 2011. Tr. 121. During that session, the parties began a practice that did not strictly follow the terms of their ground rules agreement: instead of initialing every section of every agreed-upon article, the parties signed off on an article in its entirety once agreement was reached. Tr. 30-31, 228-29; Jt. Ex. 14 ¶ 11;<sup>1</sup> *see, e.g.*, GC Exs. 6, 7; Tr. 112. Nobody on either side objected to this practice. Tr. 31-32, 228-29.<sup>2</sup>

As early as the second negotiating session in April 2011, negotiators discussed a point which later assumed much greater significance. Union negotiator Mayer testified that on the second day of bargaining:

Mr. Garrison actually signed off on a couple of the articles. Then we realized that we missed some items, and we brought that up to Mr. Mitchell’s attention. And he said on a couple of occasions that, that’s okay; we’ll go back and revisit those articles when we’re done with the negotiations. . . . And then at the end of the – when we were done with the negotiations and we wanted to reopen a couple of the articles, then Mr. Mitchell would not agree to it.

Tr. 127. Union negotiator Rohr and Bilal offered similar descriptions of the discussion on this topic. Tr. 141, 182, 187. Chief Union Negotiator Garrison testified:

<sup>1</sup> The parties agreed to a Stipulation of Facts, which was made Joint Exhibit 14, and which refers to other documents that were made joint exhibits.

<sup>2</sup> The only exception to this practice occurred with the article relating to official time. After extensive efforts to reach agreement on this article, the parties realized that they were at impasse on a portion of it, and that they would need to invoke the services of the Federal Service Impasses Panel (Panel). Therefore, they initialed the sections of the article on which they agreed, but not the disputed section that was submitted to the Panel. Tr. 35-37, 58, 96-97, 110-12.

At the very onset of negotiations, I made the statement that, at the end of negotiations, we would revisit all articles to ensure that they are in compliance with law, rule and regulation. We had some areas that we wanted to go back and revisit. The management and representative, chief negotiator, did not wish to go back and reopen those areas after multiple attempts to have him sit down with us to go over those articles.

Tr. 213-14.

Agency Chief Negotiator Mitchell agreed that under the ground rules, the parties could reopen or renegotiate a previously agreed-upon article, but only with the mutual consent of both parties. Tr. 30. He indicated that the parties did indeed reopen provisions “where we noticed that something wasn’t clear. . . . And so on more than one occasion, we would reopen a completed article, change some of the wording to make it clear and easier to read, and then we would re-sign it and close it again.” *Id.*; *see also* Tr. 121-22. Mitchell further recalled a conversation with Rohr, who identified himself as the Union’s “wordsmith,” in which they agreed the parties would review the agreement “for administrative changes for punctuation, spelling, clarity,” but Mitchell denied that it was agreed to “review each article for content or substantive changes.” Tr. 37-38; *see also* Tr. 43-44, 113-14, 120-21.

Most of the parties’ approximately sixteen negotiating sessions occurred between April and September of 2011, when they met with a mediator from the Federal Mediation and Conciliation Service (FMCS). Tr. 39, 51-52. At the FMCS mediation, the parties narrowed their areas of dispute to two issues: Section 2/3 of Article 7/8, “Local Representation/ Official Time,”<sup>3</sup> and Section 5 of Article 38, “Mediation/Arbitration.” Jt. Ex. 14 ¶ 9; Tr. 51-52. After the September mediation session, the parties did not conduct further negotiations, and they submitted these two remaining disputed provisions to the Panel. Jt. Ex. 2 at 1. Before going to the Panel, the parties had initialed off on every provision in the CBA except for the two cited sections of Articles 7/8 and 38. Jt. Ex. 14 ¶ 10. The Panel referred the

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<sup>3</sup> There is confusion in the record as to the correct numbering of this article. The “Local Representation/Official Time” article is marked as Article 7 in GC Exhibit 2, which was the proposal signed by the Chief Negotiators on April 23, 2012, and it is similarly cited in other portions of the transcript, as well as by witnesses describing the negotiations. But the Stipulation of Facts and some testimony from witnesses refer to this article as Article 8. Jt. Ex. 14 ¶¶ 9, 10; Resp. Ex. 1; Tr. 35-37. Mitchell testified, without dispute, that some of the articles were renumbered during the negotiations. Tr. 93. To reflect the ambiguity, I refer to the article relating to official time as Article 7/8. Similarly, the disputed portion of this article is sometimes marked as Section 2, and sometimes as Section 3. *Compare* GC Exs. 2 and 4, where the official time allotments are part of Section 2; *and* Jt. Ex. 14 ¶¶ 9, 10, and Resp. Ex. 1, where Section 3 is identified. Therefore, I refer to the disputed portion of Article 7/8 as Section 2/3.

dispute to Member Barbara B. Franklin, who conducted a mediation-arbitration proceeding on April 23, 2012.<sup>4</sup> *Id.* During the mediation portion of the proceeding, the Agency and the Union reached a voluntary settlement on Article 7/8,<sup>5</sup> but they could not resolve Article 38, which was left to Member Franklin to issue a binding decision. *Id.*; Tr. 40.

On April 30, Garrison sent Mitchell a letter regarding the April 23 mediation-arbitration session, at which they had signed off on the official time article. After asserting that “[t]he entire Article 8 was not negotiated at the table[]” and that “this particular Section regarding Official Time allocations of 100% and 50% of the Article 8, Section 3 of the CBA was the only matter forwarded to the FSIP Arbitrator,” Garrison requested that a negotiating meeting be convened to discuss the article “in its entirety[.]” Resp. Ex. 1 at 1. Responding to Garrison in a letter dated May 2, Mitchell insisted that prior to April 23, the parties had agreed on all sections of that article except for the allocation of official time, and that on April 23 they had reached agreement on the only remaining disputed section of the article. Accordingly, Mitchell said the article “has been negotiated in its entirety” and the Agency refused to reopen it. Resp. Ex. 2.

On May 9, Panel Member Franklin issued a final and binding Opinion and Decision resolving Article 38, Arbitration/Mediation, Section 5. Jt. Ex. 2. As the Union, the Agency, and the GC indicated in their Stipulation of Facts, “[a]s of the date of this FSIP Opinion and Decision, the parties had either initialed off on every article or the FSIP had issued a decision on an article.” Jt. Ex. 14 ¶ 11.

By letter dated May 14, Garrison advised Mitchell: “Now that both CBA negotiations and Federal Service Impasse[s] Panel actions have concluded, AFGE Local 1815 will present the negotiated CBA to its membership (Article 9) for review and ratification.” Jt. Ex. 3.<sup>6</sup> This was the first time that anyone from the Union expressed to the Agency any intention to submit the CBA to its membership for ratification. Tr. 42. Garrison sent another letter to Mitchell on June 6, advising him that the Union would conduct a ratification vote on the proposed CBA on June 19. Garrison also requested that the Agency “return to the table” prior to June 19 “to review all articles of the CBA.” Jt. Ex. 4/5.

As noted above, Mitchell had agreed during the negotiations to have Ms. Smith review “punctuation, spelling, administrative changes” with Rohr, and on June 11 Mitchell and Garrison exchanged emails to arrange a meeting for that purpose. Mitchell asked Garrison to submit proposed administrative changes to him. Jt. Ex. 12; Tr. 43-44, 121.

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<sup>4</sup> Hereafter, all dates are in 2012, unless noted otherwise.

<sup>5</sup> The parties’ agreement on Article 7/8 is documented in General Counsel Exhibit 2, which was signed by Garrison and Mitchell on April 23, on the final page of the text. In the 2002 CBA, the Union was allotted one official on 100% official time and one on 50%. At the April 23 mediation, the Union agreed to a compromise, in which the Union would have one person on 75% official time and a block of 400 additional hours. Tr. 230, 245; GC Ex. 2.

<sup>6</sup> Mitchell did not understand the reference in the letter to Article 9. Tr. 42. It did not refer to an article in the CBA, and Garrison’s testimony did not shed any light on the issue.

Smith met with Garrison<sup>7</sup> the next day, and they agreed to remove the U.S. Army Flight Test Directorate (which was no longer housed at Fort Rucker) from the list of activities covered in the CBA and to add a glossary. Jt. Ex. 13. Rohr submitted additional proposed changes on June 18. Tr. 44-45; Jt. Ex. 13. These latter changes were considerably more extensive, in Mitchell's view, and were unacceptable to the Agency. Tr. 46. The Union proposed "taking out complete sections" of three articles and "very substantially changing the substance of the negotiated article." *Id.* General Counsel Exhibits 3, 4, and 5 represent the changes the Union proposed to Articles 5, 7/8, and 28, all of which had previously been signed in their entirety by Garrison and Mitchell. *Compare* GC Exs. 3-5 and GC Exs. 2, 6 and 7. In a letter dated July 2, Mitchell explained his position and informed the Union that it would not reopen any article of the CBA for renegotiation. Jt. Ex. 7.

By letter dated June 21, Garrison apprised Mitchell that the membership had voted not to ratify the CBA. Jt. Ex. 6.

On July 9, the Agency submitted the CBA to the Agency Head for review under § 7114(c) of the Statute. The CBA was signed by various officials of the Agency, but was not signed by any representative of the Union. Jt. Ex. 14 ¶ 17. By memorandum dated July 11, the Agency Head informed the parties that the CBA was disapproved, because sections of the negotiated agreement did not conform to law, rule, or regulation. Jt. Ex. 8.<sup>8</sup> However, in a memorandum dated August 10, the Agency Head rescinded his July 11 disapproval of the CBA, based on a review of Member Franklin's May 9 decision. Jt. Ex. 9. Since Member Franklin resolved the only remaining issue in the CBA, the Agency Head concluded that contract negotiations ended on May 9; therefore, the July 11 disapproval of the CBA was untimely under § 7114(c)(2) of the Statute. *Id.*

In an August 14 letter, the Union disputed the Agency Head's decision to rescind the disapproval of the CBA. Garrison argued that Member Franklin's May 9 decision had no bearing on the execution of the CBA, and that execution could not occur until the agreement was signed by the Union. Jt. Ex. 10. Notwithstanding the Union's objection, the Agency notified the Union on August 14 that the CBA would be put into effect as of August 20. Resp. Ex. 3. On August 20, however, the Agency rescinded its decision to put the CBA into effect and notified the Union instead that it was filing an unfair labor practice charge against the Union for failing to bargain in good faith. Jt. Ex. 11.

As of the date of the hearing in this case, the 2002 CBA remained in effect, and the Union continued to refuse to execute the 2012 agreement. Jt. Ex. 14 ¶ 21.

<sup>7</sup> It is not clear who, if anyone, else participated in that meeting. *See* Jt. Ex. 13; Tr. 45.

<sup>8</sup> The reasons for the disapproval of the CBA were stated in a separate document that was not made a part of the record.

## POSITIONS OF THE PARTIES

### General Counsel

The General Counsel alleges that the Union violated § 7114(b)(2) of the Statute by failing to be represented by negotiators who had full authority to enter into binding agreements, and § 7114(b)(5) of the Statute by refusing to execute the CBA it negotiated; by committing these violations, the Union also committed unfair labor practices under § 7116(b)(5) and (8) of the Statute. GC Br. at 7.

The GC submits that once Panel Member Franklin issued her decision on May 9, the negotiation process was complete. All other sections and articles in the CBA had previously been agreed upon by the parties, and when the Franklin decision was issued, the final disputed issue in the CBA negotiations was resolved. The Union therefore was required to execute the agreement. The GC rejects the Union's argument that further bargaining was still necessary after May 9, or that the parties had previously agreed to return to the table at the end of the process to "reopen" or "revisit all articles" of the CBA. GC Br. at 11. The GC points to inconsistencies between the testimony of the various union witnesses at the hearing on this point, arguing that the Union never reserved the right to revisit all articles, and arguing further such a procedure violated the parties' ground rules agreement and was never accepted by the Agency. Under the ground rules, once a contract provision has been initialed by the parties, it is final and cannot be reopened without the mutual consent of both parties. GC Br. at 19. While the rules provided for the parties to review a final copy of the CBA at the end of negotiations, this was merely a ministerial step and did not permit reopening agreed-upon articles. As in *U.S. Patent & Trademark Office*, 18 FLRA 713 (1985) (*PTO*), the GC asserts that the parties had reached final agreement on the CBA when the Chief Negotiators signed every article but one; when Member Franklin decided that one remaining issue on May 9, the Union could not subsequently refuse to sign the full CBA. GC Br. at 17. The GC contrasts the instant case with *Fort Bragg Ass'n of Teachers*, 44 FLRA 852, 857-58 (1992), where the evidence demonstrated that the negotiated agreement was tentative, and that the parties intended that other authorities ratify the negotiated agreement before it became effective. GC Br. at 18.

The GC concedes that a union has the right to condition the execution of an agreement on ratification by its members, but only when the union has not waived that right and it has given the agency timely notice of the ratification requirement. GC Br. at 7, 19 (citing *Soc. Sec. Admin.*, 46 FLRA 1404 (1993) (*SSA*)). Although the Authority has not specified what constitutes timely notice in this context, the GC argues that NLRB case law does, and that an FLRA administrative law judge applied the NLRB precedent in a 1985 case, holding that a ratification requirement must be made known to the agency "prior to the negotiators' final agreement." *Laborers Int'l Union, Local 1276, Tracy, Calif.*, Case No. 9-CO-40001, FLRA Dec. Rep. No. 46 (1985), slip op. at 11 (*Laborers*); see also *Int'l Union of Elevator Constructors, Local No. 8, AFL-CIO*, 185 NLRB 769 (1970). Since the negotiation of the CBA here ended with Member Franklin's decision on May 9, 2012, Garrison's letter to Mitchell on May 14 regarding ratification was too late to justify the Union's refusal to execute the CBA.

Similarly, the GC asserts that the Agency Head's disapproval of the CBA on July 11 was also untimely, and that it did not justify the Union's insistence on further bargaining. GC Br. at 20. For purposes of calculating the start of the thirty-day agency head review period under § 7114(c)(2), the date of execution was the date on which no additional actions were necessary to complete the agreement, and the GC insists that occurred on May 9, citing *PTO*, 18 FLRA at 713. The Agency Head's action on July 11 was ineffective, therefore, and the Union was required to sign the CBA. The GC requests that the Union be ordered, among other things, to execute the CBA.

In its brief, the Agency reiterates the arguments of the General Counsel. It additionally cites the Authority's decisions in *AFGE, Local 2924, AFL-CIO*, 25 FLRA 661 (1987) (*Local 2924*), and *AFGE, AFL-CIO, Local 3732*, 16 FLRA 318 (1984) (*Local 3732*), for the principle that a union is obligated to execute an agreement once the Panel resolves the sole remaining issues, as here. Resp. Br. at 3. It rejects the Union's claim that the parties agreed to revisit agreed-upon articles at the end of negotiations, and it cites as evidence the Union's failure – from September 2011 to April 2012 – to advise the Agency of any articles it felt needed revision. If the Union sincerely believed that the negotiations were not complete until the contract had been reviewed, it should not have sought assistance from the Panel until those discussions had occurred. *Id.* at 6.

#### Respondent

The Union contends that its May 14 letter to the Agency, stating its intent to subject the CBA to membership ratification, was timely, and that the membership's subsequent rejection of the CBA therefore required the Agency to return to the bargaining table for continued negotiations. Citing the same *SSA* decision relied upon by the GC, the Union insists that it never waived its right to subject the CBA to a ratification vote. Resp. Br. at 4. The Union further asserts that Member Franklin's decision did not end the negotiation process for the CBA, and that the parties indeed continued to negotiate until at least June 19. *Id.* at 1, 3.

Citing *Nat'l Treasury Employees Union*, 39 FLRA 848 (1991) (*FDIC*), the Union asserts that the negotiation process is not complete when an interest arbitrator resolves only some parts of a CBA, as occurred here. The Union distinguishes the current case and *FDIC* from the facts of *Int'l Org. of Masters, Mates & Pilots*, 36 FLRA 555 (1990) (*Panama Canal*), where the Panel imposed the terms of the entire CBA on the parties, and the Authority held that the agreement was executed on the date of service of the Panel's decision.

Here, the Union cites evidence that the Agency continued to negotiate terms of the CBA with the Union between May 9 and June 18, and this was consistent with the ground rules and the statements of Union negotiators that the entire agreement would be revisited before signing. While Mitchell claimed that the agreement would only be reviewed for spelling and "administrative" matters, the Union negotiators testified that the review was to ensure also that the agreement was in compliance with law, rules, and regulations. Ultimately, the Agency Head also concluded, as had the Union, that the agreement was not in



compliance with law, rules, and regulations; then, Agency officials unlawfully chose to disregard the Agency Head's own determination, to rescind the disapproval of the CBA, and to declare negotiations completed. Since the evidence shows that negotiations did not end in May, the Union's ratification notice was timely, and the Union cannot be required to execute the CBA.

### ANALYSIS AND CONCLUSION

Section 7114 of the Statute sets forth the basic collective bargaining responsibilities of an agency and the exclusive representative of a unit of the agency's employees. Section 7114(b) provides that the duty to negotiate in good faith includes the obligations: under (b)(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement; under (b)(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment; and under (b)(5), if agreement is reached, to execute a written document embodying the agreed terms and to take such steps as are necessary to implement that agreement. The General Counsel alleges that the Union violated the latter two obligations, thus committing an unfair labor practice under § 7116(b)(5) and (8).

Despite the statutory requirement that negotiators be authorized to make binding commitments on the issues under negotiation, the Authority has frequently recognized that both unions and agencies have the discretion to assign responsibility for executing their agreement to their negotiators or, instead, to some higher authority. *See SSA*, 46 FLRA at 1412-15, where the precedent for union ratification was noted by the Authority as well as the judge; and *U.S. Dep't of Transp., Fed. Aviation Admin.*, 59 FLRA 491, 493 (2003), and *Fort Bragg Ass'n of Teachers*, 44 FLRA 852, 857-58 (1992), where approval by higher management officials was upheld.

When an agreement is subject to ratification and the membership rejects it, the agency must resume negotiations with the union, absent a showing that the union clearly and unmistakably waived its right to reopen negotiations. *Dep't of the Air Force, Griffiss AFB, Rome, N.Y.*, 25 FLRA 579, 592 (1987) (*Griffiss AFB*); *U.S. Dep't of Commerce, Bureau of the Census*, 17 FLRA 667, 671 (1985). But if membership rejection of an agreement occurs after the Panel has taken jurisdiction of an impasse and ordered the parties to arbitrate the dispute, then the Panel's order takes precedence and the agency has no obligation to reopen negotiations. *Dep't of the Navy, Norfolk Naval Shipyard, Portsmouth, Va.*, 13 FLRA 571, 576-77 (1984). Moreover, the absence of a membership ratification vote does not justify a union's refusal to sign an agreement, if the union negotiators failed to inform the agency of a ratification requirement "prior to reaching final agreement on the collective bargaining contract." *Local 2924*, 25 FLRA at 670, 672.

As a general rule, a union violates § 7116(b)(5) of the Statute when it refuses to sign an agreement which contains the terms the parties agreed to in negotiations. *Local 3732*, 16 FLRA at 319, 329-30. The Authority applies many of the traditional rules of agency law, including the principle of apparent authority; accordingly, neither a union nor an agency will be permitted to disavow the contract agreements made by its negotiator, when that negotiator

had apparent authority to bind his principal. *Nat'l Council of SSA Field Operations Locals, Council 220, AFGE, AFL-CIO*, 21 FLRA 319, 320, 331-32 (1986); *Long Beach Naval Shipyard, Long Beach, Cal.*, 7 FLRA 102, 115 (1981).

Applying the above principles to the current case, I reject the defenses raised by the Respondent that negotiations were never finalized; that it was privileged to submit the negotiated CBA to its membership for a ratification vote; or that the Agency Head's disapproval of the CBA obligated the Agency to return to the bargaining table.

The key issue in this case is when, if ever, did the parties reach agreement on all terms and conditions of the new CBA. If the GC and Agency are correct, and the parties reached agreement by April 23 on all terms of the CBA but one, and the final term was imposed on them by the Panel on May 9, then the Union could not subject the agreement to ratification, because the Union failed to notify the Agency about ratification before the close of negotiations. Conversely, if the Union is correct, and the parties had not reached a binding agreement on all terms when the Panel decision was issued on May 9, the Union's May 14 notification of an imminent ratification vote was timely, and the membership's June 19 vote against ratification obligated the Agency to renew negotiations.

A secondary issue is whether the Agency Head's July 11 disapproval of the CBA occurred more than thirty days after the CBA was executed, as the GC and the Agency contend. Determining the execution date of the agreement depends largely, as with the first issue, on whether further action was necessary – as of the Panel decision on May 9 – to finalize the CBA. If the Panel decision represented the final act for the conclusion of the CBA, then the date that decision was issued also constituted its execution date, and the thirty-day period for agency head review ran from May 9 to June 8. On the other hand, if execution of the CBA was still contingent on the negotiators' review and agreement on contract language after May 9, then the Agency Head's disapproval on July 11 would have been valid, and the parties would have been obligated to resume negotiations after July 11.

#### The Parties Reached a Meeting of the Minds.

The Union argues that bargaining was not complete on May 9, because there was a requirement for the parties to return to the bargaining table to review every article to ensure compliance with laws, rules, and regulations. This argument cannot be reconciled with the facts, or with the notion of good faith bargaining. The parties had agreed to ground rules which stipulated: (1) that once an agreement is reached and initialed on any section or article, negotiations on that provision are final, subject only to reopening by mutual consent; and (2) at the completion of negotiations, the Agency would assemble a legible form of the completed agreement for both parties to review. The second ground rule can only be understood in the context of the first. In other words, the parties would review the full set of initialed articles and ensure that they were complete and accurate, but changes to agreed-upon language could only be made by mutual consent. This "review" process was not established to enable one party to renegotiate anything, but merely to ensure accuracy. This is consistent with Mitchell's testimony, which I credit. Tr. 38, 43. It is also consistent with a plain and

logical reading of the language of the ground rules, in which the reader presumes the two provisions were written to fit together, not for one provision to nullify the other. While the Union witnesses each gave somewhat differing accounts of the parties' discussions on this point, none of them suggested that Mitchell accepted the notion that any article could be reopened or renegotiated without mutual consent. *See* Tr. 213-14. Their position was never accepted by the Agency, and it is inconsistent with the ground rules themselves.<sup>9</sup>

As I see the evidence, the parties recognized at the outset of negotiations that initialing an article or section constituted final agreement on that provision, and that a subsequent "review" of the text would be simply for obvious mistakes or changes of a non-substantive nature. I do not believe that the Union, as represented by its Chief Negotiator, ever insisted during the early stages of bargaining on a right to reopen every provision in the agreement. Rather, the Union negotiators adopted that position at or toward the end of the process, when the only unresolved article of the CBA had been submitted to the Panel – that is, when they came to the realization that they had made a bad agreement and wished to extricate themselves from their mistake.

The absurdity of the Union's ultimate position was illustrated at the hearing, when Bilal testified that the Union could agree to a formula allocating specific amounts of official time for specific officers, and sign off on that formula, but still have the right at the end of negotiations to demand a different allocation formula. Tr. 198-99, 203. He viewed the agreed-upon articles as "a working document" that could be changed "if situations change during the course of negotiations . . . ." Tr. 198. As Garrison put it, "negotiations were not going very well. Negotiations became hostile. . . . So, with the initial statement that we would revisit, I chose to just go along with the chief negotiator [Mitchell] because we had agreed at the onset to go back and revisit all articles to ensure that they were in compliance with law, rule and regulation." Tr. 219-20. This attitude was best reflected in the final issue on which the parties agreed – Article 7/8 regarding official time – on April 23, 2012, at the mediation session with Member Franklin. The parties still disagreed on the official time allocation, but they reached a compromise on that date and signed off on the entire article. GC Ex. 2. Garrison testified, "the signing was based on that we would go back and review all of those articles. . . . When we signed off on that, it was under the auspice that we were going to go back to and evaluate and review as I stated in the very beginning. Because of the hostility that we were facing, that's why I signed off on that." Tr. 245-46. Almost immediately after signing off on the official time article, Garrison turned around on April 30 and sent Mitchell a letter, insisting that the article "in its entirety was never negotiated at the table," and requesting further negotiations on "this Article in its entirety[.]" Resp. Ex. 1. In other words, no sooner had the Union signed off on the entire official time article, when it insisted the article be renegotiated in full. It is clear, therefore, that the Union was not

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<sup>9</sup> Rohr, for instance, gave an example of a question he raised on the second day of negotiations regarding the numbering of an article, and Mitchell told him to wait until the end of negotiations. Tr. 142-43. This is exactly the sort of non-substantive issue that could be addressed later, and Mitchell's response was consistent with his position throughout negotiations. This exchange does not suggest that either party sought the right to reopen and fully renegotiate all articles.

seeking a simple review of the agreement to ensure clarity of language and to harmonize the language of one article with another; it was insisting instead that a party's agreement on one day could be totally reversed the next day, if the situation (whatever that means) changed. That is not what the parties agreed to in the ground rules, however, and it is not consistent with negotiating in good faith.

Today's case is similar in many respects to the *Local 2924* case, above. In that case, the parties reached agreement and signed off on all but three articles, which subsequently were resolved consensually, with the assistance of the Panel. The union, however, insisted that the language of two provisions differed from what they had agreed to, even though the union negotiator's initials were on the draft. The union refused to sign the CBA, arguing that the parties had not reached agreement on those provisions; that the ground rules permitted either party to renege on any provision prior to signing the final contract; and that the agreement was subject to approval by its executive board. The judge and the Authority rejected the union's arguments and ruled that it had violated § 7116(b)(5) and (8). With regard to the union's insistence that it could renegotiate any provision, the judge stated, "to adopt the interpretation . . . urged by the Union would effectively negate § 7114(b)(5) of the Statute and forever deprive the Air Force Base of its right to request execution of a written document embodying the final agreement." 25 FLRA at 672. The judge also ruled that the union could not insist on ratification by its executive board, because the need for such action "was not announced prior to agreement on the contract . . ." *Id.*

The same principles apply to our case. The ground rules cannot be interpreted to permit either side to reopen and change language that has been agreed upon, without mutual consent. The ground rules provided for a review of contract language to ensure consistency and to eliminate references to management entities that no longer existed, but it was to be a purely ministerial process. The review did not allow for changes to the language of agreed-upon articles, without mutual consent. If substantive changes could be proposed, as the Union insisted, then the negotiations themselves would have been rendered meaningless. I believe that Union Chief Negotiator Garrison understood this when he negotiated the ground rules, but he and the other Union negotiators seized on the post-negotiation review at the end of the game, as a pretext to back out of a deal they no longer liked. Garrison's signature on Article 7/8 on April 23 (GC Ex. 2), contrasted with his letter of April 30, seeking to renegotiate the entire article, is simply the most stark example of how the Union's position would strip the negotiation process of all meaning.

My job is made considerably easier in this case by the Stipulation of Facts the parties entered into prior to the hearing. Jt. Ex. 14. Paragraph 9 of the Stipulation states, in pertinent part, "the Agency and the Respondent . . . initialed off on every article except for Article 8, Local Representation/Official Time, Section 3 and Article 38, Mediation/Arbitration, Section 5." *Id.* at 2. The witnesses all agreed, and GC Exhibit 2 confirms, that the Agency and Union then signed off on the entire Local Representation/Official Time article (variously numbered Article 7 or 8) at the April 23 mediation session with Member Franklin. Paragraph 11 of the Stipulation reiterates that "[o]n May 9, 2012, FSIP issued an Opinion and Decision resolving Article 38, Arbitration/Mediation, Section 5. . . . As of the date of this FSIP Opinion and Decision, the parties had either initialed off on every article or the FSIP

had issued a decision on an article.” *Id.* at 2-3. In light of these stipulated facts, it is clear that the negotiation of the CBA was complete on May 9; indeed, the negotiations were completed on April 23, when the parties relinquished control of the final contract term to the Panel. Union President Garrison himself recognized this when he wrote to Mitchell on May 14: “Now that both CBA negotiations and Federal Service Impasse[s] Panel actions have concluded, AFGE Local 1815 will present the negotiated CBA to its membership (Article 9) for review and ratification.” Jt. Ex. 3. While his letter indicated that a draft contract still needed to be reviewed, he clearly understood that the negotiation of the contract had been completed. As I have already explained, that review process did not allow either party to change agreed-upon language without mutual consent. Nonetheless, the Union attempted to abuse the review process in order to negotiate extensive substantive changes to Articles 5, 7/8, and 28 (see GC Exs. 3-5), and its refusal to execute the CBA, absent such changes, was unlawful.

Since negotiations were concluded either on April 23 or May 9 at the latest, it follows that the Union’s effort to subject the CBA to membership ratification was untimely. While the General Counsel and the Agency, in their briefs, suggest that the Authority has not ruled on this precise issue, I believe the Authority has done so. In *SSA*, 46 FLRA at 1404-05, the Authority held that a union may condition its execution of an agreement to ratification if “the employer has notice of the ratification requirement” and cited *Griffiss AFB* in support. The Authority affirmed the findings and conclusions of the judge, who cited extensive NLRB precedent permitting unions to subject agreements to ratification, so long as the ratification requirement is “known to employer’s representatives during the bargaining sessions.” 46 FLRA at 1413 (quoting *Hiney Printing Co.*, 262 NLRB 157, 164 (1982), and *Houchens Market v. NLRB*, 375 F.2d 208 (6th Cir. 1967)). The judge in *Griffiss AFB* (affirmed without comment by the Authority) found that the union told the agency “throughout the negotiations” that it would put the contract to a ratification vote. 25 FLRA at 593. In *Local 2924*, which I have already cited in detail, the judge ruled that a union’s ratification requirement was announced too late to justify its refusal to execute the agreement, because it “was not announced prior to agreement on the contract[.]” 25 FLRA at 672. It is quite clear from these decisions that in order to subject an agreement to ratification, a union must notify the agency of the ratification requirement before the close of negotiations. The whole purpose of providing notice is to allow the other party an opportunity to prepare and respond, and an agency can only prepare for union ratification if it knows about it while negotiations are still ongoing. Just as an agency’s notice of a change in working conditions cannot be given as a *fait accompli*, the same is true in the context of ratification. Because I have found here that negotiations concluded no later than May 9 (and more logically on April 23), and because the Union raised the issue of ratification with the Agency for the first time on May 14, the Union did so too late to justify its refusal to execute the CBA.

#### The Contract was Executed on May 9.

In early July of 2012, Mitchell and the other management officials at Fort Rucker gave up on trying to persuade the Union to sign the CBA, and they submitted it for Agency Head review. Jt. Ex. 7. At this point, the road took an unexpected twist, as the Agency Head disapproved it on July 11. Jt. Ex. 8. If the disapproval was carried out in accordance with

§ 7114(c) of the Statute, then the parties would have been required to return to the bargaining table to renegotiate the agreement, and the Union would have no longer been required to execute the voided CBA.<sup>10</sup>

Under § 7114(c) of the Statute, a negotiated agreement is subject to approval by the head of the agency, but the agency head must do so "within 30 days from the date the agreement is executed . . ." 5 U.S.C. § 7114(c)(2). If no action is taken by the agency head within that period, the agreement takes effect and is binding on the parties. 5 U.S.C. § 7114(c)(3). See *PTO*, 18 FLRA at 713; *AFGE, AFL-CIO, Local 1858*, 4 FLRA 361 (1980).

For purposes of § 7114(c), the date an agreement is executed is normally the date the local parties signed it. *Panama Canal*, 36 FLRA at 560. But when (as here) one or both of the negotiating parties have not signed the agreement, determining the date on which the agency head review period starts is more elusive. That was the problem facing the Authority in *Panama Canal*, because the parties had reached an impasse in negotiations and had submitted their dispute to the Panel, which (as in our case) appointed a mediator/arbitrator, who subsequently issued an award that encompassed the entire CBA; the CBA was not submitted to the agency head for more than a month. *Id.* at 561-62. In the circumstances of that case, the Authority reasoned that no further action was necessary once the arbitrator issued his decision, and the parties were not required to execute the agreement in order to trigger the 7114(c) review period. *Id.* at 562. "Thus, we hold that the date on which the arbitrator's decision imposing the parties' collective bargaining agreement was served on the parties, constitutes the date that the collective bargaining agreement was 'executed' for purposes of review by the Agency head under section 7114(c) of the Statute." *Id.*

In *FDIC*, 39 FLRA at 849, the Authority refused to apply its *Panama Canal* decision regarding the execution date of a CBA that was disapproved by the agency head after an interest arbitration ruling by the Panel. The Authority noted that in *Panama Canal*, the parties had submitted the entire CBA to the Panel for resolution, whereas in *FDIC*, the parties submitted only six articles of a larger agreement, and after receiving the arbitrator's ruling, the parties in *FDIC* had held extensive substantive negotiations over several articles that had not been resolved by the arbitrator. 39 FLRA at 849. While no further action was necessary to execute the agreement after the Panel's action in *Panama Canal*, the parties in *FDIC* still had to undertake substantive negotiations to complete their agreement; therefore, issuance of the arbitrator's decision in *FDIC* did not constitute the date the agreement was executed. *Id.* The Authority quickly followed up this decision with *AFGE Nat'l Veterans Affairs Council*, 39 FLRA 1055 (1991), *request for recon. denied*, 40 FLRA 195 (1991) (*Veterans Affairs*), in which it applied the *Panama Canal* formula and held that the issuance date of a decision by

<sup>10</sup> Even if the Agency Head's disapproval had been timely, I do not believe this would have retroactively excused the Union from its heretofore-unlawful refusal to execute the CBA. From May 9 to July 11, the Union violated § 7116(b)(5) and (8), and the Agency Head's action on July 11 did not make the Union's prior refusal to sign the CBA lawful; it simply excused the Union from having to sign the CBA after July 11. This would alter the appropriate remedy for the Union's unfair labor practice, but some remedy would still be warranted.

the Panel constituted the date the agreement was executed. In *Veterans Affairs*, the Authority found that the parties did not engage in further negotiations after the issuance of the Panel decision and that no further actions were necessary to execute the agreement. Therefore, it held that the agreement was executed on the date the Panel decision was issued. 39 FLRA at 1057. Summarizing all these decisions and seeking a synthesis, the Authority held in *Patent Office Prof'l Ass'n*, 41 FLRA 795, 803 (1991) (*POPA*), that "the date of execution that triggers the time limits for agency head review under section 7114(c)(2) relates to the date on which no further action is necessary to finalize a complete agreement[.]"<sup>11</sup>

The facts of our case are not as extreme as those in either *Panama Canal* or *FDIC*, and thus the outcome is not as clear-cut. In *Panama Canal*, the Authority emphasized that the arbitrator's decision encompassed the entire CBA being negotiated by the parties, and therefore requiring the parties to sign the contract "would constitute a meaningless formality." 36 FLRA at 562. At the other extreme, the arbitrator in *FDIC* had been "specifically presented" with only six articles of the CBA, and the parties "met extensively on at least one occasion to continue substantive negotiations over several articles which remained unresolved after the arbitrator's award." 39 FLRA at 849. The Union cites its discussions with Mitchell and other Agency officials between May 9 and June 18 concerning CBA changes proposed by the Union as evidence that negotiations continued after Member Franklin's award.

The fallacy in the Union's argument is the same one that I rejected in making my previous conclusion, that negotiations concluded with Member Franklin's award. As of April 23, the Union had signed off on every article of the CBA except one, and that last disputed article was in the hands of Member Franklin, who ruled on May 9. The parties still needed to review a full draft of the CBA to ensure accuracy, but not to discuss substantive changes to agreed-upon articles. The Union wasted the Agency's time between May 9 and June 18 insisting on substantive changes to Articles 5, 7/8, and 28, articles whose language had already been finalized. Unlike the situation in *FDIC*, the Union did not offer, and the Agency did not discuss, issues "which remained unresolved after the arbitrator's award." The Union tried to engage the Agency in substantive negotiations, but the Agency properly refused; moreover, the issues raised by the Union were over articles that had already been finally resolved by the parties prior to May 9. Thus, in the context of this case, I must conclude that as of May 9, no further action was necessary to finalize a complete CBA.

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<sup>11</sup> In an entirely different factual and legal context, the Authority recently addressed the question of when a CBA was executed, in regard to whether the CBA barred an election petition from a competing union. *U.S. Dep't of Def., Ill. Nat'l Guard, Springfield, Ill.*, 68 FLRA 199 (2015) (*Illinois Guard*). The incumbent union and the agency had reached an agreement in principle but had not yet signed the contract when a petition was filed, and the Authority restated its earlier rule that the date of execution is "normally" the date the local parties sign it. *Id.* at 201. It further noted that the only cases in which signing an agreement is not necessary for execution are those in which the parties did not reach agreement, but rather it was imposed by the Panel or an interest arbitrator. *Id.* at 200 (citing *POPA* and *Panama Canal*).

Accordingly, the date of Member Franklin's award is the appropriate date of execution of the agreement, and any disapproval of the agreement by the Agency Head had to be taken by June 8 to be effective.

Ruling in favor of the Union in this case, and finding that there were still actions that needed to be taken by the parties before the CBA could be considered executed, would leave us with a true conundrum: the execution date of a contract would be determined by a party that is accused of unlawfully refusing to execute it. The Union here was unreasonably holding out its execution of the CBA in order to extract concessions it had already signed away. If, by refusing to sign the deal it had already initialed, the Union could successfully prevent the execution of the CBA, a party would be rewarded for its own unlawful conduct. Once the Union and Agency signed the draft of Article 7/8 that is embodied in GC Exhibit 2, the parties had placed their CBA in the hands of the Panel, just as fully as the parties did in *Panama Canal* and in *Veterans Affairs*. It was for just this sort of case that the Authority reserved the possibility of considering an agreement executed without requiring it to be signed. *Illinois Guard*, 68 FLRA at 200.

In summary, I find that the CBA negotiations officially concluded on May 9, 2012; the Union's May 14 notice, that it intended to submit the agreement for ratification to its membership, was sent after negotiations were complete; and therefore, the Respondent's refusal to execute the agreement was not legally justified. Further, I find that the execution date of the CBA, for purposes of agency head review, was May 9, 2012; therefore, the Agency Head's disapproval of the CBA on July 11 was untimely and ineffective. Under these circumstances, the Respondent was obligated to execute the agreement it negotiated, and by refusing to do so, it violated § 7116(b)(5) and (8) of the Statute.<sup>12</sup>

### REMEDY

In order to remedy the Union's unfair labor practice, it is appropriate to order the Respondent to cease and desist its unlawful conduct and to execute the collective bargaining agreement. I do not believe that it is appropriate, however, for the CBA to be given retroactive effect. For example, one prominent difference between the old and the new CBAs is that the new agreement substantially reduces the amount of official time allotted to Union officials. The Agency chose not to put the new CBA into effect in the summer of 2012, and it would be unfair to retroactively void a large portion of the official time that has been performed since then.

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<sup>12</sup> The GC alleges in the Complaint and in its brief that, in addition to violating § 7114(b)(5) by refusing to execute the agreement, the Respondent violated § 7114(b)(2) by failing to be represented by duly authorized representatives. While I fully agree that the Union improperly refused to execute the agreement, I believe the evidence shows that the Union was represented by an official (Garrison) who was fully authorized to negotiate on all terms and conditions of employment. As I have already explained, Garrison made binding commitments on behalf of the Union, and the Union must abide by those commitments. Thus, I do not find any violation of § 7114(b)(2). This does not affect the ultimate remedy for the Respondent's violation of §§ 7114(b)(5) and 7116(b)(5) and (8).



The Authority recently held that unfair labor practice notices should, as a matter of course, be posted both on bulletin boards and electronically wherever an agency uses such methods to communicate with bargaining unit employees. *U.S. Dep't of Justice, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLR 221 (2014). I will incorporate the electronic dissemination into the order.

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

### ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the American Federation of Government Employees, AFL-CIO, Local 1815 (the Union), shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith by refusing to execute the collective bargaining agreement negotiated on and before May 9, 2012, with the Department of the Army, U.S. Army Aviation Center of Excellence, Fort Rucker, Alabama (the Agency).

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

(a) Execute a written document embodying the terms of the collective bargaining agreement negotiated with the Agency on and before May 9, 2012.

(b) Post at its facilities where bargaining unit employees represented by the Union 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 Union President, and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all places where the Union has the right to post notices. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) In addition to physical posting of paper notices, disseminate a copy of the Notice electronically, on the same day as physical posting, through the Agency's email, intranet and/or internet site, if such methods are customarily used to communicate with bargaining unit employees.

(d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., November 30, 2015

A handwritten signature in cursive script, appearing to read "Richard A. Pearson", written over a horizontal line.

RICHARD A. PEARSON  
Administrative Law Judge

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

The Federal Labor Relations Authority has found that the American Federation of Government Employees, AFL-CIO, Local 1815, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

**WE HEREBY NOTIFY ALL MEMBERS AND EMPLOYEES THAT:**

**WE WILL NOT** refuse to execute the collective bargaining agreement we negotiated on and before May 9, 2012, with the Department of the Army, U.S. Army Aviation Center of Excellence, Fort Rucker, Alabama (the Agency).

**WE WILL** execute a written document embodying the terms of the collective bargaining agreement we negotiated on and before May 9, 2012, with the Agency.

\_\_\_\_\_  
(Union/Respondent)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Atlanta Region, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: 404-331-5300.