UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: September 26, 2003

TO: The Federal Labor Relations Authority

FROM: ELI NASH
Chief Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
ST. AUGUSTINE DISTRICT OFFICE
ST. AUGUSTINE, FLORIDA

Respondent

AND

Case No. AT-CA-01-0121

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 4056

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the 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

SOCIAL SECURITY ADMINISTRATION ST. AUGUSTINE DISTRICT OFFICE ST. AUGUSTINE, FLORIDA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 4056 Charging Party	Case No. AT-CA-01-0121

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/her Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **OCTOBER 27, 2003**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, Suite 201
Washington, DC 20424

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ELI NASH
Chief Administrative Law Judge

Dated: September 26, 2003

Washington, DC

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

SOCIAL SECURITY ADMINISTRATION ST. AUGUSTINE DISTRICT OFFICE ST. AUGUSTINE, FLORIDA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 4056 Charging Party	Case No. AT-CA-01-0121

Richard S. Jones
Gwen Anderson
For the General Counsel

Krista Gehlken
Cathy Six
For the Respondent

Before: ELI NASH
Chief Administrative Law Judge

DECISION

Statement of the Case

This proceeding arose under the Federal Service Labor-Management Relations Statute (herein called the Statute) and the Rules and Regulations of the Federal Labor Relations Authority. The proceeding was initiated by an unfair labor practice charge filed on November 13, 2000, by the American Federation of Government Employees, Local 4056 (herein called the Union) against the Social Security Adminis-tration, St. Augustine District Office, St. Augustine, Florida (herein called the Respondent). The Complaint alleges that Respondent violated section 7116(a)(1) and (5) of the Statute by repudiating a Memorandum of Understanding (MOU) reached between the parties on April 14, 2000. Additionally, the Complaint noted that Respondent has refused to meet with the Union to even discuss the issue and listed numerous examples of repeated breaches.

A hearing was held in Jacksonville, Florida, at which time all parties were afforded a full opportunity to be represented, to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. The parties filed post hearing briefs which have been fully considered.

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

Findings of Fact

The Union is the exclusive representative for a unit of employees at Respondent's St. Augustine office.

James Richardson is the Union's elected vice president, representing more than 50 field offices, including St. Augustine, throughout south Georgia, and central, northern and southwest Florida. Richardson serves as the off-site representative for the St. Augustine office. Richardson, who is not employed in Respondent's St. Augustine office must rely on the bargaining unit employees there to inform him of changes in conditions of employment since Respondent does not always notify Richardson directly (Tr. 23).

There are approximately ten bargaining unit employees in the St. Augustine office, including service representatives and claims representatives, who, in turn, are further divided into sub-specialities (Tr. 13). In a very small office, such as St. Augustine, this has resulted in extremely small work units -- five separate work units among the ten employees, including four work units of claims representatives -- Title 2 Disability, Title 2 Retirement Survivor's Insurance, Title 16 Initial Claims and Title 16 Post Entitlement and a separate unit of service representatives (Tr. 16-17).

On March 14, 2000, the Union filed an unfair labor practice charge, Case No. AT-CA-00451, alleging a failure to negotiate over changes in work flow, brought on largely by the change to a sub-specialized office configuration (Tr. 14). The Union saw many problems with sub-specialization, particularly with managing the work when a member of such a small unit calls in sick (Tr. 17). In response to the filing of Case No. AT-CA-00451, and perhaps realizing that bargaining would be required under the Statute, Respondent immediately drafted a "Formal Notice of Proposed Changes." Respondent then demanded that the Union withdraw Case No. AT-CA-00451 as a prerequisite to any bargaining(Tr. 18).[1] Richardson testified that "[m]anagement refused to sit down with us at all until we withdrew this unfair labor practice complaint." (Tr. 18) The Union did so, although it was not completely satisfied with the narrow scope of issues that Respondent was willing to negotiate (Tr. 19). Nevertheless, two days later, the parties reached agreement on the MOU that is the subject of this case (Tr. 19).

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[1] Chaney did not concede that the Union's withdrawal of AT-CA-00451 had anything to do with Respondent's agreement to negotiate (Tr. 171-172). Respondent's own exhibit (Resp. Ex. 3) confirms that the Union withdrew the charge because management was agreeing to formal bargaining, however. In addition, in a subsequent e-mail to the Union concerning the joint review of the MOU, Chaney stated, "As you've elected to file a unfair labor practice regarding alleged violations of the MOU, any agreements regarding changes will have to be held in abeyance until that issue is resolved." (Tr. 196)

The MOU (GC Ex. 3) is a 4-page document, including the signature page. The agreement was signed by Charles Hildebrand, Respondent's St. Augustine District Manager at the time; Kenneth Chaney, Respondent's Daytona Beach, Florida, District Manager; Philip Devlin and James Richardson for the Union. The MOU covered work procedures in several respects: it provided for a method of handling phone answering duties; procedures for mentoring and training employees; a method of covering for unexpected absences in the minuscule units; and, an alphabetical method for assigning appeals. Significantly, the MOU specifically noted that the disability and RSI appointment schedules were unchanged.[2] Additionally, the parties recognized that it might not make sense to make the entire agreement permanent; hence, a "joint review in December 2000" provision was inserted. For example, the parties were aware that additional service representatives were likely to be hired, and that there was a likelihood of losing some of the Social Insurance Specialist staff (Tr. 21); hence, the parties agreed to reconvene in December of 2000 to review the agreement (Tr. 20).

A few days later, Richardson and Hildebrand held a joint meeting with the employees in St. Augustine to inform them of the MOU's terms and address their concerns. According to Richardson's uncontradicted testimony, the employees were assured that the agreement was temporary and that any required changes would be addressed in December (Tr. 21-22). Another witness, bargaining unit employee Bill Ossmer, recalls that there were two meetings, the first one without Richardson, the Union representative (Tr. 56). Additionally, Ossmer testified, without contradiction, that Hildebrand himself told the employees at one of the meetings that the agreement was only going to last until December and that after that, the whole thing was going to be renegotiated with the Union (Tr. 83). Moreover, according to Ossmer's uncontradicted testimony, Respondent further informed an arbitrator that the MOU would be renegotiated in December; and then, after December had passed, informed the same arbitrator that they were still going to renegotiate, but had not done so in December because of scheduling problems (Tr. 85). Thus, the Union and the employees were continually under the impression that the "temporary" MOU was to be renegotiated, if the parties found it necessary at the "joint review."

The Union considered the "joint review" to equate to negotiation over "changes that had been necessitated or any circumstances that had developed during the life of the agreement." (Tr. 20) Respondent, after informing both the employees and an arbitrator that it intended to renegotiate, then took the position that "joint review" does not equate to negotiation; however, its witnesses never articulated what they really thought it meant. Hildebrand testified merely that "we would review it again in December 2000 to see whether any significant changes had occurred." (Tr. 103) It would be reasonable to think, this would mean continuing to abide by the agreement if changes had not occurred and

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Respondent's witnesses claimed that the provisions stating that the disability and RSI appointment schedules were unchanged actually gave it the right to make changes (Tr. 103). Hildebrand's testimony on cross-examination seems to confirm Respondent's position that a provision announcing things remain unchanged allows subsequent changes. He testified that "the memorandum itself, it allows me to do that," (Tr. 125) even without giving the Union notice, apparently because they had "routinely" made such changes prior to the MOU (Tr. 125).

renegotiate if changes had occurred. Hildebrand admitted that if changes were to be made, Respondent would be obligated to negotiate (Tr. 123-24). Chaney, on the other hand, never acknowledged the possibility of any further duty to negotiate. His opinion was that a "joint review" was simply a conversation to announce which portions of the agreement had become moot over time (Tr. 184), but, presumably did not call for any additional discussion as to what to do about those matters that had not become moot or to negotiate any new matters: "it was management's contention that there is no reopening clause in this MOU. A review was simply that. We agreed to get together with the Union and discuss what the current state of affairs was." (Tr. 185)

Almost immediately after the joint meeting with employees in the St. Augustine office, Richardson began to hear concerns that Respondent was not following the agreement. For example, on April 18, 2000, just four days after the MOU was signed, Paul Moore and Bill Ossmer received an e-mail from Margaret Bird-Torres (GC Ex. 4), and a follow-up the next day from Hildebrand, directing them to report which training sessions that they did not need to attend. This was a bit puzzling, inasmuch as the MOU specifically provided that Moore and Ossmer would notify Respondent that they needed additional time for review only after viewing a particularly difficult or complex segment of training (GC Ex. 3, page 2). Hildebrand admitted that the MOU did not provide for employees to predict in advance which segments not to view, but asserted that a "prior agreement that we had with them" allowed excusals from the training (Tr. 129); thus, Hildebrand did not view the MOU as creating any new rights or obligations. Ossmer confirmed that disputes over training started prior to the MOU, and agreed that Respondent, prior to the MOU wanted employees to identify in advance which sessions they would not be interested in attending, and that he had pointed out the impossibility of predicting in advance which sessions would not be helpful. Notwithstanding that the MOU may have eliminated the problem, Hildebrand proceeded under pre MOU arrangements as though the MOU did not exist. (Tr. 76-77). Ultimately, Paul Moore received his Title 2 training, but never received his Title 16 training, although the MOU clearly and unequivocally stated he would receive both
(Tr. 98). Ossmer, pursuant to an arbitration award, resumed his work in the Title 2 area (Tr. 54; 95); thus, he no longer works in the Title 16 area, for which he had volunteered and for which he was to receive training
(Tr. 73).

There were other alleged examples of breaches of the MOU reported to Richardson. For example, on August 2, 2000, Ossmer sent a memorandum to Hildebrand asking why he was assigned an appeal outside the alphabetical breakdown set forth in the MOU (GC Ex. 5). Hildebrand, ignoring any reference to the MOU, responded on August 7, 2000, stating essentially that the case was assigned to Ossmer because he had the expertise to handle it (GC Ex. 6). Ossmer also testified, this was somewhat disconcerting and naturally left employees wondering whether there was any point to establishing the alphabetical breakdown in the MOU
(Tr. 58). Hildebrand's explanation was that the matter Ossmer was inquiring about was a "technical" appeal, and the MOU (which states, generally, "appeals") only applied to "medical" appeals (Tr. 114). Such an interpretation of the MOU would be more credible if Hildebrand had explained it to Ossmer at the time in

response to his specific inquiry about whether the provisions in the MOU were being followed. Hildebrand's explanation that he didn't have to do this, because the MOU was "not material" to Ossmer's query about a specific provision of the MOU (Tr. 131) lacks credibility. Still other examples of breaches of the MOU's provisions reported to Richardson included unexplained "exceptions" to the phone answering rotation system (GC Ex. 12) and changes to the disability (GC Ex. 7) and RSI (GC Ex. 9) appointment calendars.

Based in part, on the foregoing instances, Richardson decided to formalize the Union's concerns in an August 16, 2000, memorandum, which he submitted to Hildebrand (Tr. 23; GC Ex. 4). In the memorandum, Richardson requested a response by August 31, 2000. Hildebrand never responded to the request, or even respond at all prior to August 31, 2000 (Tr. 35). When Richardson raised the issue with Hildebrand, expressing the Union's disappointment at receiving no reply, Hildebrand told Richardson that he could not discuss the issue at all without having his boss, Chaney, with him (Tr. 36).[3] Finally, the Union filed the instant unfair labor practice charge on November 13, 2000 (GC Ex. 1(a)).

As if it were not clear that Respondent had no intention of abiding by the MOU, this attitude manifested itself further in December 2000, when the Respondent initially failed to respond at all to the Union's request to engage in the "joint review," and then declined to meet because of vacation plans (Tr. 38). No explanation was proffered as to why such holiday vacations were not anticipated when the parties committed to the December date. The Union gave Respondent an "open calendar" as to alternative dates, but Respondent initially refused to provide any (Tr. 38). Finally, in response to an e-mail, Chaney replied by e-mail, noting that he would be out of the country from December 18th through January 2, and Hildebrand would likewise be unavailable until January 2 (Tr. 194-195); thus, concluded Chaney, it would be impossible to arrange any time in December to "meet."[4] Hildebrand testified that he was essentially unavailable the entire month of December and could only speculate why

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Hildebrand's testimony that he verbally went over the items in Richardson's memorandum with him, item by item, also lacks credibility. First, as Chaney's appearance and demeanor at the hearing demonstrated, he is a person who clearly saw himself as being in charge of negotiations. He later removed Hildebrand from his position at St. Augustine and expressly did not grant Hildebrand's successor, Perry Laycock, any authority in negotiations (Tr. 143). Thus, Richardson's testimony that Hildebrand deferred to Chaney is quite believable. Indeed, Laycock himself acknowledged that if the Union had come to him, he, too, would have deferred to Chaney (Tr. 152). Secondly, Hildebrand in his testimony refused to discuss in detail what he and Richardson talked about in this purported item-by-item review of GC Ex. 4, other than, in general terms, to assert that he told Richardson that he believed Respondent was abiding by the MOU.

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Interestingly, at this point, both parties seemingly understood that a face-to-face meeting was contemplated for the "joint review," thereby adding credibility to Richardson's testimony that the January 25 conference call that was ultimately held was not the "joint review" envisioned by the parties, but was merely a discussion about when the joint review could be held (Tr. 39). Actually, if a brief conference call was all that was required for the "joint review," then surely Respondent could have found time prior to the holiday vacations.

Respondent continued to insist that he be involved in the joint review even though he no longer worked at St. Augustine (Tr. 142). Throughout this process, as Richardson testified (consistent with Chaney's e-mail of January 23, 2001), Respondent absolutely refused to engage in any substantive discussion or negotiations concerning the MOU because the Union had filed the instant unfair labor practice charge (Tr. 39).

On January 25, 2001, the parties held a telephone conference call in which Chaney reiterated that this was not a negotiation session, and the Respondent considered the MOU to be moot (Tr. 39; 197-98). No agreements were reached (Tr. 198).[5] Although testimony on precisely varies on what was said during the conversation, the evidence clearly shows that nothing changed as a result of the call. At most, if Respondent's witnesses are to be believed, Respondent simply informed the Union that it considered certain provisions of the MOU to be moot, and that it was "self-evident" as to which provisions were still in effect. (Tr. 200)

It certainly appears to the undersigned that the parties were left after the January 25 conference call with no better understanding of the MOU's status than before. Thus Respondent terminated the phone rotation procedure (ostensibly because the arrival of new Service Representatives rendered the procedure moot), but it continued to adhere to an agreement to reduce the case load for Ms. DeSue that was tied directly to her additional phone duties, based on Respondent's unilateral review of imbalances in workloads (Tr. 167-68; 201). Additionally, while Ossmer is no longer working Title 16 claims, thereby arguably rendering the MOU's alphabetical division of workload moot, the alphabetical breakdowns for his former co-worker, Moore, apparently have continued (Tr. 123). Even while denying the MOU's continued life, Respondent acknowledged that "some" of the MOU remains in effect
(Tr. 123), and that it is "self-evident" which is which
(Tr. 200).

Analysis and Conclusions

Whether Respondent Repudiated the April 14, 2000 MOU in Violation of Section 7116(a)(1) and (5) of the Statute.

A. Was the April 14, 2000 MOU a Valid, Enforceable, Legal Agreement?

A negotiated agreement may be valid whether the particular agreement was the result of the settlement of a previous unfair labor practice charge or whether it arose from different origins. Clearly, an agreement between an agency and the exclusive representative of its employees although not initially negotiated as part of an overall collective bargaining agreement is nonetheless valid and enforceable. *See Federal Aviation Administration*, 55 FLRA 1271 (1999; *U.S. Department of Justice, Federal Bureau of Prisons, FCI Danbury, Danbury,*

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Chaney indicated that if the parties reached agreement on anything, it would be reduced to writing (Tr. 198), thereby contradicting Hildebrand's assertions that he and Richardson had previously, without Chaney's involvement, verbally agreed that the MOU was being followed: "I assume he agreed;" (Tr. 132) "to my understanding, there was no disagreement about what I was saying." (Tr. 133)

Connecticut, 55 FLRA 201 (1999); *Great Lakes Program Service Center, Social Security Administration, Department of Health and Human Services, Chicago, Illinois*, 9 FLRA 499 (1982).) Although Respondent denies any connection between the Union's withdrawal of the prior unfair labor practice and its agreement to engage in negotiations that resulted in the April 14, 2000 MOU, this is a distinction without a difference. Even assuming that the parties negotiated and agreed to the April 14, 2000 MOU totally separate from any consideration of a previous unfair labor practice charge, the case law demonstrates that it is equally valid and enforceable.

The Respondent did not suggest that the April 14, 2000 MOU was unenforceable because of illegality. Clearly, matters concerning rotations and work schedules of equally qualified employees are fully negotiable. *See Social Security Administration, Baltimore, Maryland*, 31 FLRA 651 (rotation of service representatives did not interfere with management's right to assign work); *American Federation of Government Employees, Local 3172 and U.S. Department of Health and Human Services, Social Security Administration, Modesto, California,* 49 FLRA 302 (1994) (rotation of equally qualified employees is a negotiable procedure); *U.S. Department of the Treasury, Customs Service, Washington, D.C. and Customs Service, Northeast Region, Boston, Massachusetts*, 38 FLRA 770 (1990) (length of rotation of equally qualified employees is substantively negotiable). Thus, the provisions concerning phone duty rotations, assignment of cases based on alphabetical breakdowns, and the agreement to maintain the status quo with respect to appointment schedules are all negotiable matters. Moreover, the Authority has specifically found procedures and appropriate arrangements surrounding Title 2 and Title 16 specialization training within the Social Security Administration, as we have here, to be within the duty to bargain. *American Federation of Government Employees, Local 3231 and Social Security Administration*, 22 FLRA 868, 873 (1986).

Accordingly, it is found and concluded that the April 14, 2000 MOU was a valid, legal, enforceable agreement.

B. Did Respondent Repudiate the April 14, 2000 MOU?

Respondent maintains that it complied with the MOU. It also asserts that the MOU was a "temporary fix" in order to provide coverage for three service representatives who were lost to the St. Augustine office. Furthermore, Respondent claims that its actions surrounding the MOU do not rise to the level of repudiation.

In *Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia*, 40 FLRA 1211 (1991), the Authority considered whether an agency's failure or refusal to honor an agreement constituted a repudiation:

> 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. . . . 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.

40 FLRA at 1218-19. Additionally, in *Department of the Air Force, 375th Mission Support Squadron, Scott Air Force Base, Illinois*, 51 FLRA 858, (1996), the Authority reasoned:

> [T]wo 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?).

51 FLRA at 862; *Federal Aviation Administration and National Association of Government Employees, Local R3-10, SEIU, AFL-CIO*, 55 FLRA 1271, 1282 (2000). Examination of either element may require an inquiry into the meaning of the agreement provision allegedly breached. Id. For the reasons which follow, application of the above-stated test to the facts in this case sufficiently demonstrates that Respondent repudiated the MOU.

1) Did Respondent Clearly and Patently Breach the April 14, 2000 MOU?

The evidence revealed several clear and patent breaches of the MOU. For example, and as noted above, the clear and unequivocal procedures for scheduling training were simply ignored; rather, Hildebrand and Bird-Torres continued to require the employees to essentially decide in advance which sessions to attend, consistent with an earlier practice, as though the MOU had never come into being. Other examples included Respondent's unilateral changes in the disability and RSI appointment schedules notwithstanding the MOU's clear and unequivocal statement that both were "unchanged." Again, Respondent acted as if the agreement did not exist, continuing to make changes as it always had.

Additionally, the assignment to Ossmer of an appeal outside the clear and unequivocal alphabetical scheme, and the Respondent's refusal to even acknowledge the MOU in its written response to Ossmer's inquiry concerning the matter, clearly and patently breached the agreement. The failure to initiate training for Chris Dean by July 2000 (although, ultimately Dean received his training) clearly and patently breached the agreement. Similarly, the failure to ever provide Title 16 training to Paul Moore clearly and patently breached the agreement. Respondents' refusal to schedule the "joint review" for December 2000 (even assuming that the January 25 conference call in fact constituted a "joint review") clearly and patently breached the agreement. Finally, Respondent's termination of the phone rotation system (while keeping in place another provision of the same MOU paragraph concerning Ms. DeSue's duties) was a clear and patent breach of the agreement.

In short, it appears that Respondent consciously and deliberately acted as though the MOU did not exist. It continued with the same training procedures that it would have followed even without the agreement, at its own pace. It made changes to the appointment schedules just as if the agreement had been completely silent as to those schedules. Finally, it unilaterally determined which provisions of the MOU were no longer applicable and which provisions it would continue to honor, even interdependent provisions within the same paragraph.

2) Did Respondent's Breach Go to the Heart of the MOU and the Parties' Bargaining Relationship?

The General Counsel anticipated that Respondent would concede the clear and patent breaches of the agreement, but would argue that "such violations clearly do not amount to repudiation." (Tr. 10) In this regard, Respondent certainly attempted to focus on the breaches in isolation and argue that a few isolated instances of a breach do not go to the heart of the agreement. However, as the General Counsel noted, "it is not each breach in and of itself that repudiates the MOU, but rather management's steadfast refusal to address or acknowledge the MOU at all when these concerns are brought to its attention." (Tr. 8)

In the circumstances of this case, the totality of Respondent's conduct must be scrutinized. Respondent has consistently taken the position that it believes the agreement would be followed, when, and only when, it suits Respondent's purposes. In this regard, Respondent clearly declared certain provisions moot, but not the entire agreement. When one party attempts to "pick and choose" from provisions in an agreement, the Authority has long held that there is in fact no agreement at all. For example, in situations where an agency head disapproves certain provisions of a collective bargaining agreement, none of the agreement takes effect. *See Patent Office Professional Association and U.S. Department of Commerce, Patent and Trademark Office*, 41 FLRA 795, 802 (1991) (where an agency head timely disapproves an agreement under section 7114(c) of the Statute, the agreement does not take effect and is not binding on the parties). Similarly, here, Respondent cannot just declare certain provisions of the MOU "moot," and yet continue to adhere to other provisions -- particularly, where, as here, the other provisions were negotiated as *quid pro quo* for the allegedly "moot" provisions. Just as an agency head's rejection of a contract term constitutes rejection of the entire agreement, Respondent's announcement that certain provisions of the MOU are "moot," constitutes an outright renunciation of the entire MOU. It is difficult to imagine a more convincing illustration of a repudiation.

Any argument that Respondent anticipated that certain provisions of the agreement would become moot, and that is why the parties negotiated the "joint review" provision also has its shortcomings. Such an argument might be a valid one except that Respondent herein refused to engage in any negotiation or meaningful discussion at the purported "joint review" conference call. In this regard, I credit Richardson that the January 25 conference call closed with Chaney stating "there would be no review or no new Memorandum of Understanding or no bargaining or meeting because we had filed an unfair labor practice complaint." Such an ending is wholly inconsistent with Respondent's

claim that the "bulk of the call was spent on going through the MOU paragraph-by-paragraph." Furthermore, it is undisputed that Respondent informed employees (at the initial meeting following execution of the MOU) and even told an arbitrator that it planned to renegotiate the MOU.

The Authority certainly envisions renegotiation when part of an agreement is rendered ineffective.[6] In PTO, supra, the Authority provided its rationale as follows:

> . . . give and take is one of the cornerstones of collective bargaining. Thus, it would not be unusual for parties having reached tentative agreement on a particular provision to reconsider that agreement in efforts to come to an agreement on another provision. Moreover, one segment of an agreement may affect the meaning of another segment.

41 FLRA at 803. The situation here is exactly the same. For reasons known only to it, Respondent decided not to engage in the negotiations originally envisioned by the parties when they agreed to "joint review" (and announced to the employees and to an arbitrator that it would take place). Respondent instead, elected to simply inform the Union that it thought events had "overcome" certain provisions of the MOU, while, keeping in place related and co-dependent provisions based on its own evaluation of workload distribution. Respondent thus turned the "joint review" provision of the MOU into an "expiration date," a somewhat unreasonable interpretation.[7] In my view, there is little doubt that Respondent's conduct not only goes to the heart of the MOU, but constituted a rejection of the MOU. Furthermore, since the obligation to negotiate is at the heart of any bargaining relationship, Respondent's repudiation goes to the heart of the bargaining relationship as well. *See Department of the Air Force, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia,* 52 FLRA 225, 232 (1996) (the Authority applied its holding in *Scott Air Force Base, supra*, and found that a clear and patent breach with respect to a smoking policy agreement went to the heart of the agreement and, because

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6 See *Department of the Interior, National Park Service, Colonial National Historic Park, Yorktown, Virginia*, 20 FLRA 537, 541 (1985) (when a portion of an agreement is disapproved, an agency has the obligation to return to the bargaining table with a sincere resolve to reach agreement).

7 Even assuming that the "joint review" could be interpreted as an expiration date, Respondent's pronouncement that some of the agreement was moot is insufficient as a matter of law. The Authority has noted that "[a] party should not have to guess whether negotiated agreement terms are in effect or not. Such matters are of critical importance in governing the parties' day-to-day labor-management relationship." *U.S. Department of Justice, Federal Bureau of Prisons, FCI Danbury, Danbury, Connecticut,* 55 FLRA 201, 205 (1999).

smoking policy was a significant area of concern to bargaining unit employees, went to the heart of the bargaining relationship as well).

Accordingly, Respondent's statement that it considered major portions of the MOU "moot," without renegotiating the other provisions, would be, in my opinion, tantamount to an announcement that the agreement was "null and void." It has already been found that such a pronouncement alone establishes repudiation without the necessity for delving deeply into specific management conduct as to each of the MOU's provisions and ascertaining whether each one clearly and patently breaches the agreement. See, *U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Tallahassee, Florida,* Case Nos. AT-CA-00915 and AT-CA-01-0080, ALJDR No. 161 (adopted by the Authority without precedential significance on May 10, 2001). The approach in this case should be applied herein. In my opinion, the instant Respondent by its pronouncements therefore, repudiated the April 14, 2000 MOU.

Accordingly, it is found and concluded that Respondent not only clearly and patently breached the MOU, but announced and implemented an outright rejection of the MOU. Such conduct, it is found, was a repudiation of the MOU and violated section 7116(a)(1) and (5) of the Statute.

It is, therefore, recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the Social Security Administration, St. Augustine District Office, St. Augustine, Florida shall:

1. Cease and desist from:

(a) Failing and refusing to comply with the Memorandum of Understanding reached on April 14, 2000, with the American Federation of Government Employees, Local 4056 concerning work flow, training, and other procedures and appropriate arrangements for employees.

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

2. Take the following affirmative action:

(a) Enforce the April 14, 2000 Memorandum of Understanding in all respects.

(b) Upon request, negotiate in good faith with the American Federation of Government Employees, Local 4056 in an effort to jointly determine any revisions necessitated by changed circumstances.

(c) Post a Notice containing the contents of the order in conspicuous places, facility-wide, including all bulletin boards and other places where notices are customarily posted, for a period of at least sixty (60) consecutive days from the date of posting. The Notice will be signed by the Daytona Beach District Manager. Reasonable steps will be taken to insure that such Notices are not altered, defaced, or covered by any other material.

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

Issued, Washington, DC, September 26, 2003.

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ELI NASH
Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Social Security Administration, St. Augustine District Office, St. Augustine, Florida, 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 refuse to comply with the Memorandum of Understanding reached on April 14, 2000, with the American Federation of Government Employees, Local 4056 (the Union) concerning work flow, training, and other procedures and appropriate arrangements for employees.

WE WILL NOT in any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL enforce the April 14, 2000 Memorandum of Understanding; if we believe that any provision(s) have become moot and require further negotiation, we will notify the American Federation of Government Employees, Local 4056 and jointly reach a determination as to any revisions.

_____

(Activity)

Dated: _____ 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, Atlanta Regional Office, Federal Labor Relations Authority, whose address is:

Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, GA 30303-1270, and whose telephone number is: 404-331-5212.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by ELI NASH, Chief Administrative Law Judge, in Case No. AT-CA-01-0121, were sent to the following parties in the manner indicated:

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

Richard S. Jones **7000 1670 0000 1175**
2614
Gwen Anderson
Federal Labor Relations Authority
Marquis Two Tower, Suite 701
285 Peachtree Center Avenue
Atlanta, GA 30303-1270

Krista Gehlken **7000 1670 0000 1175**
2621
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Social Security Administration
6401 Security Boulevard
G-H-10, West High Rise Building
Baltimore, MD 21235-6401

James A. Richardson **7000 1670 0000 1175**
2638
Vice President
AFGE, Local 4056
c/o SSA
1706 South Woodland
Deland, FL 32720

REGULAR MAIL:

Bobby Harnage, President
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dated: September 26, 2003
Washington, DC