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

U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW NEW YORK, NEW YORK Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 286 Charging Party	Case No. BN-CA-04-0291

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(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 **APRIL 11, 2005**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20005

_____
RICHARD A. PEARSON
Administrative Law Judge

Dated: March 8, 2005
Washington, DC

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

MEMORANDUM DATE: March 8, 2005

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
NEW YORK, NEW YORK

Respondent

Case No. BN-CA-04-0291

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 286

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 transcripts, exhibits and any briefs filed by the parties.

Enclosures

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

U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW NEW YORK, NEW YORK Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 286 Charging Party	Case No. BN-CA-04-0291

Laurie R. Houle
For the General Counsel

Sharon J. Pomeranz
For the Respondent

Kevin Kerr
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. §§ 7101-7135 (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (the Authority), 5 C.F.R. Chapter XIV, Part 2423.

Based on an unfair labor practice charge filed by the American Federation of Government Employees, Local 286, AFL-CIO (the Union or Charging Party), the Regional Director of the Authority's Boston Region issued a Complaint and Notice of Hearing on June 29, 2004, alleging that the U.S. Department of Justice, Executive Office for Immigration Review, New York, New York (the Agency or Respondent) violated section 7116(a)(1) and (5) of the Statute by engaging in a course of bad faith bargaining in the negotiation of a collective bargaining agreement. The Respondent filed a timely answer, denying that it bargained in bad faith or that it committed an unfair labor practice.

A hearing in this matter was held in New York City on October 19, 2004, at which time all parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses.[1] The General Counsel and the Respondent subsequently filed post-hearing briefs, which I have fully considered. I conclude, in agreement with the General Counsel, that the Respondent violated § 7116(a)(1) and (5) of the Statute.

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

FINDINGS OF FACT

The American Federation of Government Employees (AFGE) has been certified since September 1999 as the exclusive representative of a bargaining unit of approximately 45 legal technicians and interpreters employed at the Agency's Office of Chief Immigration Judge in New York. AFGE Local 286 is an agent of the AFGE for the purpose of representing these employees. The Office of Chief Immigration Judge, which is one of three primary components of the Agency headquartered in Falls Church, Virginia, oversees the operations of Immigration Courts throughout the United States. The parties have never entered into a collective bargaining agreement (CBA) covering the New York employees. Their attempt to negotiate such an agreement is the focus of the current unfair labor practice proceeding.

The Union and the Agency reached agreement in the autumn of 2002 on ground rules (Joint Exhibit 2) for the negotiation of a CBA. These ground rules were signed by the parties' chief negotiators, Assistant Chief Immigration Judge Daniel Echavarren for management and AFGE National Representative Vincent Castellano for the Union. Among the many ground rules are the following provisions:

> 2 b) The parties further agree that negotiations will be held Monday through Friday from 9:00 a.m.

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[1] Both before and at the hearing, the General Counsel requested a bench decision, but the Respondent opposed the motion. By its plain language, section 2423.31(d) of the Authority's Rules and Regulations gives me the discretion to issue a bench decision only upon joint motion – most likely, because a bench decision involves the parties' waiver of their right to file posthearing briefs. I therefore denied the motion.

> to 4:00 p.m. in one-week increments. Upon the conclusion of each one-week session of negotiations the parties shall mutually agree in writing to the date of the next negotiation session.
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> . . . .
>
> 2 d) The parties will agree to a mutually acceptable location for contract negotiations and caucus sessions prior to the commencement of negotiations. Negotiations will be held at 26 Federal Plaza [New York City].
>
> . . . .
>
> 9. Changes in ground rules will only be made by mutual consent of the Chief Negotiators or their designees.

Pursuant to the ground rules, the Union submitted its initial written contract proposals to the Agency on November 21, 2002 (Joint Exhibit 3), and the Agency submitted its initial proposals to the Union on January 6, 2003 (Joint Exhibit 4). The bargaining teams held their first (and as it turned out, their only) week of direct negotiations July 14 through July 18, 2003.[2] Initially, they debated which of their documents would serve as the basis for their negotiations. Echavarren felt frustrated that most of the Union's proposals seemed to be "boilerplate" language taken from other agencies' agreements, language that did not reflect the reality of the Agency's workplace. Despite the considerable differences between their proposals and perspectives, the parties nonetheless made some headway that week in finding common ground on specific substantive proposals (Tr. 31, 96, 135).

At the end of the July session, the Agency and Union tentatively agreed to meet again the week of October 6 through 10. They also agreed to continue exchanging ideas and counterproposals by email during the interim between bargaining sessions, in the hope of narrowing the areas of dispute and making the next session more productive (Tr. 33, 96-97, 137-38). In an email dated July 25, the October dates for the next session were confirmed (Joint Exhibit 7).

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[2] Most of the events in this case occurred between July 2003 and March 2004; therefore, unless otherwise noted, dates in the months of July through December refer to 2003, and January through March refer to 2004.

The parties' schedule got untracked, however, when Castellano developed a conflict with the agreed-upon dates and requested an alternate week for bargaining. In a message dated September 9, he requested a postponement and offered alternate weeks in October and December (Joint Exhibit 10). On September 12, he advised the Agency that he had rearranged his schedule to eliminate his conflict for the week of October 6-10, but by that time the Agency negotiators had made other commitments and could not meet on that week or on either of the alternate weeks proposed by the Union. In response, Castellano asked Echavarren on September 16 to propose some dates on which management would be available (Joint Exhibit 12). On September 30, Echavarren sent the following email reply (Joint Exhibit 22):

> Since we can't make your Oct 14 and Dec 1 weeks, we'll have to look at Jan and Feb. We're already commited [sic] the week of Feb 16. What have you got?

While the Union and Agency were exchanging emails in search of a new meeting date, they were also comparing notes and proposals from the July session (e.g., Joint Exhibits 13-15, 23). On November 2, Castellano submitted some new counterproposals by email to management, and he simultaneously advised the Agency that the Union was available the weeks of February 16 and 23 for face-to-face negotiations (Joint Exhibit 24). Echavarren replied on December 1, thanking Castellano for his counterproposals and promising to submit some new proposals of his own "in the next few days." (*Id.*) But he made no mention of the Union's offer to meet in February, prompting Castellano to remind Echavarren on December 10 of the need to set a date. (*Id.*) On January 7, noting that it appeared the Union and management were close to agreement on certain contractual issues, Echavarren sent the Union some detailed comments on four articles and asked the Union to respond; however, despite mentioning the difficulty in scheduling a bargaining session, Echavarren neither commented on the Union's offer

to meet the week of February 23[3] nor offered any alternate dates on which the Agency would be available (Joint Exhibit 25).

The Union and Agency continued to talk over each other's heads throughout February and March. Castellano continued to demand that the Agency schedule a date for the next face-to-face bargaining session, while Echavarren continued to demand that the Union submit written comments on the outstanding substantive contractual issues (Joint Exhibits 26-28). Castellano objected to the form of the Agency's counterproposals of January 7, as the Agency had simply commented on the Union's proposals without offering any alternative contract language (Joint Exhibit 26). Compounding the communications gap, Castellano had been unable to open or print a document prepared by the Agency, a side-by-side comparison of the parties' proposals, because the document was in a computer format that was incompatible with Castellano's computer (Tr. 45-46; see also first message in Joint Exhibit 24).

On March 16, Castellano's frustration began to boil over. In an email on that date, he threatened to file a ULP charge against the Agency for refusing to bargain, if management did not (among other things) offer dates it was available for a bargaining session (last message in Joint Exhibit 28). Echavarren replied on March 18, noting that management had previously sent the Union a side-by-side comparison of the bargaining proposals and substantive comments on four contract articles (second message in Joint Exhibit 28). He stated, in part:

> I think you have an obligation to respond substantively to what we have offered to date and to keep trying to narrow the issues before incurring the expense of getting together again. . . let's concentrate on doing that before setting a date for getting back together at the table.

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[3] Based on Echavarren's email of September 30 and Castellano's reply on November 2, the parties appear to have indicated their mutual availability for the week of February 23. At the hearing, Echavarren testified that he would not have met with the Union that week, because he was negotiating a CBA with another union the week of February 16 and he would not have wanted to devote two consecutive weeks to negotiations. He did not advise Castellano of this at the time, however, and the only logical inference of Echavarren's correspondence was that the Agency was available to meet on the week of February 23.

Castellano responded on March 23 that management's proposals had been incomplete, and he requested that the Agency submit proposals in the form of "whole articles." Castellano also reiterated the Union's desire to set a date for face-to-face bargaining (first message in Joint Exhibit 28). When the Agency did not respond further by March 30, the Union filed the unfair labor practice charge which is the subject of this case.[4]

DISCUSSION AND CONCLUSIONS

Positions of the Parties

The General Counsel begins its argument by citing the language in section 7103(a)(12) of the Statute, that

> "collective bargaining" means the performance of the mutual obligation . . . to meet at reasonable times . . . and bargain in a good-faith effort to reach agreement . . .

This language is echoed and expanded in section 7114(b), where the duty to negotiate in good faith includes "the obligation . . . to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays." The General Counsel emphasizes the words "to meet" and "places," and it cites cases in which the Authority and the National Labor Relations Board have similarly emphasized the importance of in-person meetings in the collective bargaining process. *See, e.g., Environmental Protection Agency*, 16 FLRA 602, 613 (1984)(*EPA*); *Fountain Lodge, Inc.*, 269 NLRB 674 (1984).

The Union and Agency have held only one series of face-to-face negotiations, from July 14 to 18, 2003. The initial delay in holding the next set of meetings (scheduled for October) was unquestionably due to the Union's cancellation. But the Union and the General Counsel argue that beginning

[4] In late June and early July of 2004, the Union and the Agency engaged in further email correspondence that reiterated their respective positions (Joint Exhibits 29-32). The Union pursued the scheduling of face-to-face bargaining, while the Agency insisted that the Union submit further email responses to management's January proposals before it would resume in-person bargaining. As noted by Echavarren in Joint Exhibit 32, "It really wouldn't be reasonable to meet again until the issues to be discussed are significantly narrowed . . . ."

on November 2, if not earlier, the Agency acted unreasonably and in bad faith in refusing to schedule any further in-person negotiations, and that the Agency has prevented any further meetings from taking place. The Agency's bad faith was demonstrated in different ways, according to the General Counsel. The Agency stalled the process by failing to respond for long periods of time to the Union's request for dates management was available to meet. The Agency compounded the scheduling difficulties by only responding negatively to dates offered by the Union and refusing to offer any dates of its own. Finally, when the Union threatened to file a ULP charge, the Agency demanded that the Union submit written counterproposals before it would schedule further meetings. This latter action, it is contended, violated the parties' written ground rules, which called for one-week in-person bargaining sessions at 26 Federal Plaza, not for bargaining by mail. The General Counsel argues that these actions demonstrate a failure to "meet at reasonable times and convenient places as frequently as may be necessary," as well as a pattern of "unnecessary delays" in violation of sections 7114(b)(3) and 7116(a)(5).

For its part, the Respondent argues that it has approached the negotiations with the Union at all times in good faith, and that it is the Union which has caused the process to stall and ultimately to break down. The Agency asserts that while it has always responded to Union requests promptly, the Union has often waited long periods of time to respond to management proposals. It cites its ready agreement to a second week of negotiations for October 6-10; the Union's cancellation of that session; the month-long wait for the Union's November 2 response to management's September 30 offer of meeting dates; the Agency's furnishing of bargaining documents to the Union subsequent to the July negotiations (such as Joint Exhibits 6 and 23); and its submission of counterproposals to the Union on January 7, all as indicia of management's good faith and interest in reaching an agreement. The Agency notes that the parties had verbally agreed to continue discussing the contract proposals and to narrow their disputes by exchanging proposals during the intervals between bargaining sessions. In the Respondent's view, the bargaining process broke down not because of a failure to schedule another bargaining session, but because the Union refused to respond to management's January 7 counter-proposals, a refusal which the Agency characterizes as a repudiation of the Union's earlier agreement to negotiate by email.

Analysis

The case at bar is a textbook-worthy example of why, even in the computer age of instant electronic communication, there is no substitute for face-to-face negotiations in fulfilling the duty to engage in collective bargaining. While the parties may find email and other media to be useful tools in enhancing the bargaining process and in narrowing disputed issues in between face-to-face meetings, it will usually be necessary for the negotiators to periodically sit down in the same room together to hammer out their differences. That certainly was true in this case.

As noted by the General Counsel and the Respondent, the Authority has taken the following approach to allegations of bad faith bargaining: "In determining whether a party has fulfilled its bargaining responsibility, the totality of the circumstances in a case must be considered." *U.S. Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 36 FLRA 524, 531 (1990)("*Wright-Patterson*"). In other words, the Authority generally shuns the application of per se rules to identify bad faith acts during the bargaining process; instead, it looks at the evidence as a whole to evaluate whether a party has complied with the mandate of section 7114(b) to (among other things) "approach the negotiations with a sincere resolve to reach a collective bargaining agreement[.]" In so doing, the Authority looks at the parties' actions to determine whether a party "has attempted to evade or frustrate the bargaining responsibility" outlined in section 7114(b). *Division of Military and Naval Affairs, State of New York*, 7 FLRA 321, 338 (1981). In the context of ground rules for negotiations, the Authority stated in *Wright-Patterson* that "ground rules proposals must, at a minimum, be designed to further, not impede, the bargaining for which the ground rules are proposed." 36 FLRA at 533.

Looking at the facts of this case, the parties began bargaining on a promising note, first by agreeing upon ground rules (Joint Exhibit 2), next by conducting a full week of negotiations in July 2003, and then by agreeing on a second week of negotiations in October. But when the Union sought to reschedule that October session due to a conflict, the parties sparred for more than six months without finding another mutually acceptable date to meet; indeed, the parties have now gone 19 months without a meeting. The issue before me is whether this breakdown in the negotiations was attributable to mutual problems and disagreements, or whether it was caused by one party's improper conduct.

In my view, the Agency acted unreasonably in three specific ways. First, at no time after September 30 did it give the Union any specific dates on which it was available to meet for bargaining, despite numerous requests by the Union and numerous offers of dates on which the Union was available. Second, it violated the express provision of the parties' ground rule that negotiations take place at 26 Federal Plaza. And third, by refusing to return to the bargaining table until email negotiations progressed further, the Respondent violated the requirement of section 7114(b)(3) of the Statute "to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays." Together, these actions demonstrate bad faith in the conduct of the Respondent's negotiations with the Union.

The Authority spoke on this first point in *Army and Air Force Exchange Service, McClellan Base Exchange, McClellan Air Force Base, California*, 35 FLRA 764, 769 (1990) (*McClellan AFB*). It held: "In our view, the statutory obligation to bargain includes, at a minimum, the requirement that a party respond to a bargaining request." The agency in that case had resisted negotiating ground rules in person with the union, insisting instead on doing so by mail or other means, and it didn't respond to the union's requests for meetings for over four months. In our case, from September 30 to March 18 the Respondent engaged in electronic communications with the Union, but it totally ignored the Union's many requests to set a date for bargaining sessions. Even its September 30 message to the Union was at best vague on the issue of scheduling: while Echavarren said management was "commited" [sic] the week of February 16, he didn't actually say when they might be available. And when the Union turned around and offered on November 2 to meet the week of February 23, the Agency said nothing at all, but later claimed it couldn't have met on that week anyway.

The Union continued to press the Respondent for meeting dates, and management continued to evade the subject. When Echavarren broke his silence on the scheduling issue on March 18, he didn't offer any dates to meet, but simply defended his refusal to meet until the issues had been narrowed. Similarly, after the Union said on June 23 that it was "available to negotiate at anytime. Please send me the dates on which you and your team are available" (Joint Exhibit 29), Echavarren replied that his negotiators would "go over our calendars again to find possible dates to meet," but he never actually presented any such dates to the Union. Thus the facts reveal a twelve-month history of evasiveness by the Respondent regarding its availability to

meet with the Union, highlighted by five months of totally ignoring the Union's scheduling requests. As in *McClellan AFB*, my conclusion that the Agency negotiated in bad faith does not require a finding that face-to-face negotiations are essential under section 7114(b)(3). The Agency's refusal to even discuss the scheduling of meetings for more than five months, and its evasiveness on the subject over a longer period, constituted a failure to negotiate in good faith.

The Respondent justifies its insistence on continued email negotiations in March by arguing that the Union had agreed to just such a process the previous July and November, and that the Union subsequently tried to repudiate that agreement. But this argument twists the meaning of the parties' discussions 180 degrees. As the negotiators left the bargaining table on July 18, they agreed to exchange proposals by email, at the same time as they set a date for their next bargaining session. When Castellano submitted written counterproposals to the Agency on November 2, he again noted his desire to continue discussions in the interval between sessions, but he simultaneously advised Echavarren that the Union was available to meet the weeks of February 16 or 23. At no time did the Union agree that written or electronic communications would be a substitute for, or a basis for delaying, face-to-face bargaining.

This issue is important, because the parties had already developed written ground rules which specifically called for negotiations to take place in person, at 26 Federal Plaza. The ground rules went into considerable detail about the logistical arrangements for the negotiations, but nowhere in the ground rules is there a provision for negotiating by mail or in writing, after the parties' initial proposals had been exchanged. The second sentence in paragraph 2b of the ground rules is also significant, because it indicates that the parties intended to continue scheduling additional bargaining sessions, regardless of whether they made any progress in narrowing issues during the intervals. The verbal discussion by the parties in July about continuing to negotiate between sessions was not an amendment to the written ground rules, but simply a statement of intent to keep the process moving in between bargaining sessions. Moreover, the Union abided by that statement, as it did submit counterproposals to management in November. Thus, not only does the evidence contradict the Agency's argument that the ground rules had been amended, but it establishes that the Agency violated the ground rules by refusing to come to the bargaining table until the Union submitted additional written proposals.

The Respondent cites a non-precedential 2001 decision by Judge Oliver involving contract negotiations between the same agency and a different union. *U.S. Department of Justice, Executive Office for Immigration Review, Falls Church, VA*, Case No. WA-CA-00554, ALJ Dec. Rep. No. 163 (September 21, 2001). That case does bear striking similarities to the instant case, in that the Agency seems to have employed the same tactical approach of refusing to return to the bargaining table until mail and electronic means of narrowing the issues had been exhausted. And in the earlier case, the ALJ found that the parties had indeed agreed to exhaust these other means of communications before resuming face-to-face bargaining. Noting that parties are free to adopt appropriate techniques and ground rules to assist in negotiations, the Judge found that the parties had amended the ground rules and that the Agency's delay in returning the bargaining table was justified. The crucial distinction between the 2001 case and this one, is that here the parties did **not** amend their ground rules, and the Union followed through on its stated desire to communicate through email in between bargaining sessions. The Union never agreed to **delay** face-to-face negotiations while they communicated electronically. While the parties are free to establish their own ground rules for conducting negotiations, a "logical corollary" of that principle is that one party may not unilaterally set its own ground rules or change existing ones. *375th Combat Support Group, Scott Air Force Base, Illinois*, 46 FLRA 640, 665 (1992). That is what the Respondent has done here, and in doing so it has demonstrated a lack of good faith.

Finally, applying a "totality of the circumstances" analysis to the parties' actions from July 2003 to March 2004 and beyond, I conclude that the Agency's resistance to in-person negotiations became increasingly inflexible and unreasonable, to the point that by March it had lost its resolve to reach an agreement and had resorted instead to delaying the process. In early September, when the October meeting date was canceled, it was perfectly appropriate for the parties to agree to continue discussing and trying to narrow the issues in dispute by email. At first, the Agency exchanged contract proposals with the Union while also discussing possible dates to return to the bargaining table. But starting on November 2, when the Union made a series of contract concessions and counterproposals, and told management it was available to meet the week of February 23 (a week the Agency appeared to be available also), the Respondent evaded the subject of meeting with the Union and devoted itself solely to bargaining by mail.

To be sure, the Agency was not ignoring the Union or negotiations totally: on January 7, two months after receiving the Union's November 2 counterproposals, the Agency submitted a set of counterproposals of its own. While management's proposals were submitted in the form of general comments rather than in precise contract language, they did demonstrate an interest at that time in making progress toward an agreement. But as later events showed, the Agency gave up on the idea of in-person bargaining in favor of negotiating entirely by mail. By doing so, the Agency sought to change the rules of the game and brought the game to a halt.

The Agency did not say so in its January 7 letter, but it later became clear that it would not agree to schedule another bargaining session until the Union responded substantively on the issues addressed in that January 7 letter. After receiving management's comments on the four contract articles, Castellano continued to demand that a bargaining session be scheduled, and Echavarren continued to demand that the Union send written comments on the contract issues. Castellano offered to do so, but only if the Agency submitted complete contract language for the four articles addressed in the letter (see, e.g., February 27 message in Joint Exhibit 26). Finally on March 18, Echavarren made clear what he had previously been suggesting: the Agency believed the Union had an obligation to "respond substantively" to the Agency's contract proposals and "to keep trying to narrow the issues before incurring the expense of getting together again." (Message of March 18 in Joint Exhibit 28.) Castellano offered to respond if management submitted its proposals in "whole articles" and if management offered available dates for another session (Message of March 23 in Joint Exhibit 28), but Echavarren did not reply to that offer. On July 1, 2004, after the ULP charge had been filed, Echavarren repeated his earlier position that "[i]t really wouldn't be reasonable to meet again until the issues to be discussed are significantly narrowed" (Joint Exhibit 32).

Thus, after sending its revised contract proposals to the Union on January 7, the Agency decided that "the expense of getting together again" was not "reasonable" until the parties had narrowed their disputes further (Joint Exhibit 28). The facts suggest exactly the opposite, however: bargaining by email had outlived its usefulness and was obstructing the process rather than enhancing it. *See Wright-Patterson*, 36 FLRA at 533. The parties were exchanging written communications back and forth, but they were not making any progress through these means. The Union was having difficulty opening some of the Agency's email

attachments, and it wanted management to propose specific contract language on these articles instead of simply making general observations about the issues. Echavarren wanted the Union to respond specifically to his January 7 proposals, but the Union had already submitted its own counterproposals by mail on November 2, and it was reluctant to make further concessions away from the bargaining table. By February, the parties were simply talking over each other's heads, and their exchanges often took weeks to occur. It was the Agency that was being unreasonable in March, when it insisted that negotiations be conducted only by email. After a seven-month lapse, the time for face-to-face bargaining had come, and the Agency's refusal to do so was not simply inflexible, but legally indefensible. *See, Department of the Air Force, Griffiss Air Force Base, Rome, New York*, 25 FLRA 579, 596 (1987); *EPA, supra*, 16 FLRA at 613. If the statutory requirement to "meet at reasonable times and convenient places as frequently as may be necessary" is to have any meaning, then the Respondent's refusal to meet with the Union in March, or even to schedule a meeting date, and its continued insistence on electronic bargaining, constituted a violation of its duty to negotiate in good faith.

For all the reasons stated above, I conclude that the Respondent violated section 7116(a)(1) and (5) and committed an unfair labor practice.

As a remedy for the Respondent's unfair labor practice, the General Counsel requests that the Agency be ordered to return to the bargaining table with the Union within thirty days, to schedule future negotiation sessions in a timely manner, and to post a notice to that effect to employees. For the most part, this type of order is consistent with remedies imposed by the Authority in similar cases. *See, e.g., Wright-Patterson*, 36 FLRA at 534. The Respondent has not offered any reasons to impose a different remedy. I certainly agree that the Respondent must be ordered to resume face-to-face negotiations, and in order to ensure this, I believe it is appropriate to require the Agency to provide the Union with a list of dates on which it will be available to meet. Further negotiation sessions should be

scheduled in a timely manner.[5] I therefore recommend that the Authority issue the following remedial order:

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 Statute), it is hereby ordered that the U.S. Department of Justice, Executive Office for Immigration Review, New York, New York (Agency) shall:

1. Cease and desist from:

(a) Bargaining in bad faith during collective bargaining negotiations with the American Federation of Government Employees, Local 286, AFL-CIO (Union), the exclusive representative of certain of its employees, by refusing or failing to schedule meetings to continue negotiations with the Union.

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

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

(a) Respond promptly to Union requests for dates on which the Agency is available to meet and negotiate, and thereafter meet with the Union at reasonable times and intervals with a sincere resolve to reach a collective bargaining agreement.

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[5] With respect to future negotiations, I note in passing Echavarren's testimony (Tr. 153) that he would not schedule negotiations with two different unions in consecutive weeks, and that he had been engaged in contract negotiations with several unions. Depending on the number of contract negotiations going on at a given time, a rigid application of this policy could prevent the Agency from fulfilling its obligation to meet at reasonable times. While an agency negotiator is not required to drop all his other responsibilities to bargain with a union, he may not let his other responsibilities take precedence over his agency's duty to meet at reasonable times. Alternate representatives may be made available in his stead, for instance. *See, Wright-Patterson*, 36 FLRA at 532-33; *Caribe Staple Co., Inc.*, 313 NLRB 877, 893 (1994).

(b) Post a copy 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 Chief Immigration Judge, and they shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by any other material.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Boston Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, March 8, 2005.

_____
RICHARD A. PEARSON
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 U.S. Department of Justice, Executive Office for

Immigration Review, New York, New York, 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 bargain in bad faith during collective bargaining negotiations with the American Federation of Government Employees, Local 286, AFL-CIO (the Union) by refusing or failing to schedule meetings to continue negotiations with the Union.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights assured them by the Statute.

WE WILL respond promptly to Union requests for dates on which we are available to meet and negotiate, and we will thereafter meet with the Union at reasonable times and intervals with a sincere resolve to reach a collective bargaining agreement.

_____
(Signature)
Chief Immigration Judge

Dated: _____

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, Boston Regional Office, Federal Labor Relations Authority, whose address is: 99 Summer Street, Suite 1500, Boston, MA 02110-1200, and whose phone number is (617) 424-5730.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. BN-CA-04-0291, were sent to the following parties:

_____

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

Laurie R. Houle **7000 1670 0000 1175 5110**
Federal Labor Relations Authority
Boston Regional Office
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