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, BOARD OF IMMIGRATION APPEALS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3525, AFL-CIO Charging Party	Case No. WA-CA-80032

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 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 **AUGUST 26, 1998**, and addressed to:

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

GARVIN LEE OLIVER
Administrative Law Judge

Dated: July 27, 1998
Washington, DC

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

MEMORANDUM DATE: July 27, 1998

TO: THE FEDERAL LABOR RELATIONS AUTHORITY

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEAL

Respondent

and Case No. WA-CA-80032

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 3525, AFL-CIO

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

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, DC 20424

U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, BOARD OF IMMIGRATION APPEALS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3525, AFL-CIO Charging Party	Case No. WA-CA-80032

Jeanne Marie Corrado, Esquire
Justin Cutlip, Esquire
Counsel for the General Counsel, FLRA

Daniel Echavarren, Esquire
Counsel for the Respondent

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The amended unfair labor practice complaint alleges that the Respondent (BIA or Board) violated section 7116(a)(1), (5) and (6) of the Federal Service Labor-Management Relations Statute (the Statute), by not considering requests for flexiplace work arrangements from three bargaining unit employees while the issue of flexiplace was pending before the Federal Service Impasses Panel (FSIP or Panel).

The Respondent's answer admitted the jurisdictional allegations, but denied any violation of the Statute. For the reasons set out below, I find that the Respondent violated the Statute, as alleged.

A hearing was held in Washington, DC, on June 3, 1998. The Respondent and the General Counsel were represented by counsel and afforded full opportunity to be heard, adduce

relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The Respondent and General Counsel filed helpful briefs. 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 Parties

The American Federation of Government Employees, Local 3525, AFL-CIO is the certified exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent. The bargaining unit is made up of approximately 165 employees, 100 of whom are attorneys. The collective bargaining agreement in effect at the time the charge was filed (October 15, 1997) had no provision regarding flexiplace work arrangements.

Bargaining on New Agreement and Assistance Requested of FSIP

On or about May 21, 1996, the Union submitted a request to negotiate a new collective bargaining agreement. In June 1996, at the Respondent's request, the parties began an informal phase of negotiations. The Union proposed a flexiplace article. The Respondent presented a counterproposal on August 22, 1996. Formal negotiations began in September 1996. The parties were not able to come to an agreement, so they sought the services of a Federal Mediation and Conciliation Service mediator and, later, in March 1997, the Union requested assistance from the FSIP. The Union ultimately withdrew that request, and the parties continued to bargain. On September 10, 1997, the Union again requested the assistance of the FSIP on several issues, including the issue of flexiplace. Both Union requests for FSIP assistance included the statement, "Although several Board employees do work away from the office for all or part of the week, no known Board policy on

flexiplace exists. Current practice has been inconsistent."[1]

Action on Flexiplace Requests Prior to FSIP Involvement

A 1992 publication of the Department of Justice, "Work Options: Balancing Workstyles and Lifestyles - A Manager's Guide to Human Resource Management" states, in part, that flexiplace, also known as flexible workplace, refers to paid employment performed away from the office for a portion of the workweek. The publication states that flexiplace is a supervisory work option and not a right. It sets forth guidelines for selecting employees and positions for flexiplace and three separate forms to be completed by employees and supervisors participating in the program. (G.C. Exh. No. 9).

In 1995-96, BIA's parent organization, the Executive Office of Immigration Review, put together a committee to develop criteria for flexiplace. The committee secured the Department publication and forms, but its overall effort was unsuccessful. The next step to develop a formal program came when the issue was addressed by the Union and management negotiating teams.

Requests for flexiplace were received and considered on a case-by-case basis to accommodate employees, just as special arrangements were occasionally permitted with respect to employees changing from full-time to part-time status, or employees being granted administrative leave or leave without pay.

I credit the testimony of Margaret O'Herron, BIA attorney and chief negotiator for the Union, Thomas Ragland, BIA attorney, and Maureen Dunn, BIA attorney, to the effect that it was general knowledge in the office that some employees were working flexiplace. According to Mr.

[1] Margaret O'Herron, chief negotiator for the Union, testified in explanation of this statement. She said that, although the Office of Personnel Management and the Department of Justice had guidelines on flexiplace, there was "no known Board policy" which set criteria or standards when considering requests for flexiplace, and the practice was "inconsistent" in that employees working under a flexiplace arrangement were given a variety of limitations in terms of hours of work, days in the office, or required medical documentation to support their requests. She testified that the Union's proposal made clear that the Union wanted a uniform, consistent, and objective policy.

Ragland, employees also regularly received notices from the Attorney General encouraging divisions to help employees have an improved work life and home life by using flexible workplace opportunities, where possible, including flexiplace.

Various factors were considered in reaching a decision on an employee's flexiplace request. These included demonstrated medical concerns, child care needs, commuting problems, the capability to do word processing in an area of the home without interruption or other demands, work performance, and not being a new employee or in training. Only attorneys have been approved for flexiplace to date.

BIA has not used the guidelines set forth in the Department of Justice publication to make decisions on requests for flexiplace, but it has used the forms developed by the Department to implement this worklife option. All employees granted flexiplace have executed such forms.

Decisions on flexiplace requests at the BIA are made by the chief attorney examiner, or someone acting in that capacity, in consultation with the chairman and vice-chairman of the Board. Since September 1995 the chief attorney examiner has been Neil P. Miller. His predecessors were Wayne Stogner and David Holmes.

During the period February 1995 through June 1997, the Respondent granted the requests of eight attorneys for flexiplace work arrangements and denied one such request, as follows:

1. On September 23, 1994, Lois Agronick, citing child care and personal reasons, submitted a request for a flexiplace work arrangement to Mary Dunne, acting chairman, and David B. Holmes, chief attorney examiner. On or about February 28, 1995, Ms. Agronick's request for flexiplace was granted.

2. In August 1995, the exact date being unknown, Sharon Riotto, citing commuting and child care reasons, submitted a request for a flexiplace work arrangement to Paul Schmidt, BIA chairman. Ms. Riotto's request for flexiplace was subsequently granted.

3. On September 19, 1995, Elena Albamonte, citing child care reasons, submitted a request for a flexiplace work arrangement to Wayne Stogner, acting chief attorney examiner. Ms. Albamonte's completed forms for a flexiplace work arrangement were subsequently signed and approved by Wayne Stogner on October 30, 1995.

4. On December 8, 1995, Timothy McIlmail, citing commuting time, quality of home and work-life, and child care reasons, submitted a request for a flexiplace work arrangement to Neil Miller, chief attorney examiner. Throughout the months of December 1995 through April 1996, Mr. McIlmail submitted revised and updated proposals dealing with his need to obtain a computer. Subsequently, Wayne Stogner approved Mr. McIlmail's request for flexiplace.

5. On December 12, 1995, Sheila Helf submitted a request for a flexiplace work arrangement to Neil Miller. Ms. Helf's stated reasons for requesting flexiplace concerned improved quality of home and worklife, reduction of commuting time, and child care related matters. On February 5, 1996, Neil Miller approved Ms. Helf's request for flexiplace.

During the contract negotiations mentioned above, the Respondent continued to grant four additional requests for flexiplace, as follows:

6. On August 5, 1996, Gary Saltsman, citing health reasons, submitted a request for a flexiplace work arrangement to Neil Miller which was granted on September 12, 1996.

7. On September 11, 1996, Daisy Rosen, citing health reasons associated with her pregnancy, submitted a request for
a flexiplace work arrangement to Neil Miller. On September 26, 1996, Wayne Stogner granted Ms. Rosen's request for flexiplace.

8. On April 21, 1997, Erin Scally, citing family reasons associated with her two sons, submitted a request for a flexiplace work arrangement to Paul Schmidt, chairman. On June 23, 1997, George Martin, the acting chief attorney examiner, and Wendy Ikezawa, a team leader, granted Ms. Scally's request for a flexiplace work arrangement. Ms. Scally's flexiplace work arrangement was to run for 6 months or "until the union contract negotiations are concluded and you continue to meet the mutually negotiated criteria." (Jt. Exh. 1 at 90).

9. One request for flexiplace was denied during the period. On September 25, 1996, Jennifer Tyler requested a one-week flexiplace work arrangement in order to recover from ankle surgery. Neil Miller denied the request for flexiplace. He determined that the use of sick leave was more appropriate for this short-term situation.

Board Refuses to Act on Further Requests Until Flexiplace Issue at FSIP is Resolved

The three flexiplace requests that are the basis of this complaint, constituting one fourth of all the requests for flexiplace made at the BIA, were all received within a one-month period ending in mid-September 1997. This was about the same time that the BIA and the Union had reached an impasse in the renegotiation of their agreement (August 12, 1997), including the issue of flexiplace, and the Union had requested the assistance of the FSIP (September 10, 1997). The three requests were as follows:

1. On August 4, 1997, Thomas Ragland submitted a request for a flexiplace work arrangement to Neil Miller. Mr. Ragland's stated reasons for requesting flexiplace were commuting, quality of life, and child care issues.

2. On August 20, 1997, Maureen Dunn, citing child care reasons, submitted a request for a flexiplace work arrangement to her team leaders.

3. On September 16, 1997, Leland Beck, citing health related transportation issues, submitted a request for a flexiplace work arrangement.

Steve Muir, labor and employee relations officer for the Department of Justice, Executive Office of Immigration Review, provided advice to the managers concerning the flexiplace requests. Management "did not want to be backdoored into a program that . . . would take shape, and have a substance of its own, that would be dictated primarily by previous requests." Neil Miller testified that he felt that it was "appropriate to defer action on these three requests, rather than decide yes or no on them." The decision was made to defer action on the requests pending resolution of what was expected by Board management to be an imminent decision from the FSIP. (Tr. 79, 95).

On September 22 or 23 1997, Ragland, Beck, and Dunn received memoranda from Neil Miller responding to their requests for flexiplace. All three memoranda were identical and stated:

> In response to your request for flexiplace, I regret to inform you that we are unable to approve your request at this time. The issue of flexiplace for employees at the Board of Immigration Appeals (BIA) is currently an issue at

> the negotiating table between management and the union. This issue is at the Impasse Panel and until such time as the issue is resolved, the board will not act upon any further requests.
>
> Upon the resolution of this issue, if a flexiplace program exists and you meet the eligibility requirements, please feel free to renew your request at that time. I regret that a more favorable decision could not be forthcoming at this time. (G.C. Exh. No. 3, 5 & 8).

The requests of Ragland, Beck, and Dunn were the first requests for flexiplace that were not acted upon. The Board had acted on every prior employee request for flexiplace.

Upon receiving the Respondent's September 22, 1997, memo, Thomas Ragland requested and was granted two separate meetings with Board managers. The first meeting was with Neil Miller, and the second was with Paul Schmidt, BIA chairman, and Mary McGuire Dunn, vice-chair. At both meetings, Ragland asked why the BIA would not consider his request when it had in fact recently granted other employees' requests for flexiplace which were submitted during contract negotiations. In response, both Miller and Schmidt explained that the other requests were granted while the parties were at the table in contract negotiations, but that once the parties went to impasse over the flexiplace issue, the Board could not consider any further requests. In addition, they both indicated that the issue of flexiplace was being litigated by the parties.

FSIP Assistance - New Agreement

The FSIP took jurisdiction of the September 1997 request for assistance and, on January 5 and 6, 1998, held a two-day informal conference between a senior Panel representative and the parties. With the assistance of the Panel representative, the parties reached agreement on several articles of a successor agreement, including a flexiplace article. Following additional proceedings, the new agreement, with the article on flexiplace, received agency approval on May 18, 1998.

Discussion and Conclusion

Positions of the Parties

The General Counsel contends that, by refusing to consider the requests of Ragland, Dunn, and Beck for flexiplace while the issue of flexiplace was before the FSIP, the Respondent failed to maintain the status quo, i.e., its past practice of considering all flexiplace requests, and thereby violated section 7116(a)(1), (5) and (6) of the Statute. The General Counsel claims that the record clearly establishes that the Respondent's practice of considering all requests for flexiplace was consistently applied over a two- and-a-half-year period and that BIA managers at different levels were fully aware of this practice.

The Respondent defends on the basis that the General Counsel failed to meet its burden of showing that a binding past practice regarding flexiplace existed at the Board. The Respondent points out that only eight requests for flexiplace were ever granted in a unit of approximately 165 employees, the record does not disclose exactly what factors were considered in evaluating the few requests for flexiplace that were granted, and the alleged past practice did not preclude consideration of the pendency of a negotiated flexiplace program as a factor to be considered.

The Respondent contends that it fully participated in the impasse procedures and specifically sought to avoid denying the Panel the opportunity to help the parties develop a negotiated flexiplace program. Respondent claims it declined to unilaterally grant or deny any more flexiplace requests before completing the bargaining process with the Union "so as not to create a flexiplace program by fiat," and acting on the three requests would have "moved the Board significantly closer to unilaterally defining the parameters of a flexiplace program."

According to the Respondent, even if its actions amounted to a change in past practice, such a change would not violate the Statute. Respondent points out that it did not unilaterally implement its own sought-after change in a condition of employment, as in an Authority line of cases, but, at most, suspended a practice that both parties found objectionable, pending implementation of a procedure following the negotiation process. Respondent claims that such deference to the negotiation process is exactly what the law encourages.

Issues Presented

The Authority has held that failure to maintain the status quo, to the extent consistent with the necessary

functioning of an agency, while a negotiation dispute is pending before the Panel violates section 7116(a)(1), (5) and (6) of the Statute. See, for example, Department of Health and Human Services, Social Security Administration and Social Security Administration, Field Operations, Region II, 35 FLRA 940, 949-51 (1990); Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 18 FLRA 466 (1985).

The Respondent failed to consider the requests of Ragland, Dunn, and Beck for flexiplace while the issue of flexiplace was before the Panel. The issues for determination are: (1) whether flexiplace is a conditions of employment; (2) if so, whether there was an established past practice concerning the consideration of such requests; and (3) if so, whether the Respondent's action violated the Statute by changing its procedures for the consideration of such requests and, thereby, failing to maintain the status quo, to the extent consistent with the necessary functioning of an agency, while the negotiation dispute was pending before the Panel.2

Condition of Employment

In determining whether an Agency has refused to comply with an established practice, it must first be decided whether the matter alleged to be a practice involves a condition of employment of bargaining unit employees. Antilles Consolidated Education Association and Antilles Consolidated School System, 22 FLRA 235 (1986) (Antilles); U.S. Department of Labor, Washington D.C. and U.S. Department of Labor, Employment Standards Administration, Boston, Massachusetts, 37 FLRA 25 (1990).

Applying the test formulated by the Authority in Antilles for determining whether a matter is a condition of employment, I conclude that flexiplace is a condition of employment as defined in section 7103(a)(14) of the Statute.

Past Practice

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2 The Respondent does not argue as a defense that its actions were necessary for the functioning of the Board. It does argue that such a defense illustrates that management can, under some circumstances, make a change while the issue is before the Panel without violating the Statute, and that the Authority's decision in Order Denying Request for General Ruling, 31 FLRA 1294 (1988) declined to create a per se rule.

Once it is determined that the matter alleged to be a past practice involves a condition of employment, it must be demonstrated that the practice has been consistently exercised over a significant period of time and followed by both parties or followed by one party and not challenged by the other. U.S. Department of Labor, Washington, D.C., 38 FLRA 899 (1990). "Essential factors in this regard are that the practice must be known to management, responsible management must knowingly acquiesce, and such practice must continue for some significant period." Norfolk Naval Shipyard, 25 FLRA 277, 286 (1987).

I conclude, under these criteria, that the Respondent had a past practice of considering all requests for flexiplace on their merits.

The existence of several flexiplace work arrangements at BIA, and the existence of flexiplace as a possible workplace option in the Department of Justice, was well known to BIA employees. During a two-and-a-half-year period, nine attorneys, totaling approximately 9% of the approximately 100 attorneys in the bargaining unit, submitted requests for a flexiplace work arrangement to the Respondent. These requests were accepted and considered by responsible management officials at the highest levels of the Board. All the requests generally set forth some common problems, such as child care needs, health issues, or commuting difficulties, and the resulting effects of these considerations on work and home life. That there were no set criteria for adjudging requests for flexiplace during this period does not prove that the *procedure* for considering such requests was inconsistent or equivocal. Of the nine employees who submitted requests for flexiplace, all were considered on their merits on a case-by-case basis and eight were granted flexiplace. Each of the employees who requested and were granted flexiplace filled out the standard Department of Justice flexiplace forms.

The background, number, and frequency of the BIA requests and approvals, ranging over a period of more than two years, was sufficient to give employees and management a reasonable expectation that requests for flexiplace submitted in a systematic and organized manner to BIA through the chief attorney examiner, or alternate, would be considered on their merits. A reasonable person would view these factors as reflecting a consistent pattern that suggests recurrence based on design as distinguished from recurrence based on luck or one-time affairs. Cf. Social Security Administration, Mid-America Service Center, Kansas City, Missouri, 9 FLRA 229, 240 (1982).

The Respondent changed this procedure for considering requests for flexiplace by deciding, "This issue is at the Impasses Panel and until such time as the issue is resolved, the Board will not act upon any further requests." The Respondent contends that the scope of the practice encompassed consideration of many relevant factors, and notes that the pendency of a negotiated flexiplace program was a factor considered by the Board in one instance (Erin Scally) when the Board decided to grant flexiplace only for a limited period pending future eligibility under a negotiated agreement. Therefore, the Board contends that it did not change past practice by considering that factor in the instant cases.

The Board did change the past practice. In handling Scally's request, the pendency of a negotiated flexiplace program was merely a factor considered in the decision to grant the request for a limited period. In the instant case, the pendency of the issue at the FSIP was used as the reason to suspend *all* decisions granting or denying the requests until the issue was resolved.

The September 1997 change constituted a serious change in the procedures of handling all requests. FSIP assistance did not resolve the issue until January 1998, and the three individuals whose requests were not considered on the merits in September 1997 were not eligible to reapply until some eight months later, after the new agreement went into effect in May 1998. The Respondent's expectation at the time of an imminent decision from the FSIP, while understandable, is irrelevant. Specific evidence of an intent by Respondent to evade or frustrate its bargaining obligation is not required since intent is not an element of a section 7116(a)(5) violation. Marine Corps Logistics Base, Barstow, California, 33 FLRA 196, 202 (1988); Internal Revenue Service (District, Region, National Units), 16 FLRA 904, 922 (1984).

The continued processing and consideration of flexitime requests on a case-by-case basis would not have created a program by fiat, as contended by the Respondent, but would only have maintained the status quo, as the Respondent was obligated to do. By changing the procedures for considering requests for flexiplace work assignments while the negotiation dispute was pending before the Panel, the Respondent violated section 7116(a)(1), (5) and (6) of the Statute, as alleged.

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals (Board), shall:

1. Cease and desist from:

(a) Unilaterally discontinuing the practice of considering all requests for flexiplace work arrangements while negotiations over the issue of flexiplace are pending before the Federal Service Impasses Panel (Panel).

(b) Failing and refusing to cooperate with impasse procedures as required by the Federal Service Labor-Management Relations Statute.

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

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

(a) Upon request of the American Federation of Government Employees, Local 3525, AFL-CIO, the exclusive representative of Board employees, consider the requests of all employees whose flexiplace requests were not considered while the issue of flexiplace was before the Panel, including the requests of Thomas Ragland, Maureen Dunn and Leland Beck. In considering such requests, the Board shall apply the same criteria and standards it applied to requests made prior to the time the issue of flexiplace was submitted to the Panel.

(b) Consistent with law and regulation, make adversely affected employees whole for any annual leave used due to the Board's failure to consider their requests for flexiplace work arrangements while the issue was at the Panel.

(c) Post at its facilities wherever bargaining unit employees represented by the American Federation of Government Employees, Local 3525, AFL-CIO, 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 Chairman of the Board of Immigration Appeals and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Washington 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 herewith.

Issued, Washington, DC, July 27, 1998.

GARVIN LEE OLIVER
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 Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals (Board), violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

We hereby notify bargaining unit employees that:

WE WILL NOT unilaterally discontinue the practice of considering all requests for flexiplace work arrangements while negotiations over the issue of flexiplace are pending before the Federal Service Impasses Panel.

WE WILL NOT fail or refuse to cooperate with impasse procedures as required by the Federal Service Labor-Management Relations Statute.

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

WE WILL, at the request of the American Federation of Government Employees, Local 3525, AFL-CIO, the exclusive representative of Board employees, consider the requests of all employees whose flexiplace requests were not considered while the issue of flexiplace was before the Panel, including the requests of Thomas Ragland, Maureen Dunn and Leland Beck. In considering such requests, we will apply the same criteria and standards applied to requests made prior to the time the issue of flexiplace was submitted to the Panel.

WE WILL, consistent with law and regulation, make adversely affected employees whole for any annual leave used due to the Board's failure to consider their requests for flexiplace work arrangements while the issue was at the Panel.

(Activity)

Date: By:
(Signature)
(Title)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Washington Regional Office, Federal Labor Relations Authority, whose address is: 1255 22nd Street, NW., Suite 400, Washington, DC 20037, and whose telephone number is: (202)653-8500.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. WA-CA-80032, were sent to the following parties:

CERTIFIED MAIL, RETURN RECEIPT NOS: **CERTIFIED**

Jeanne Marie Corrado, Esquire P168-059-587
Justin Cutlip, Esquire
Federal Labor Relations Authority
1255 22nd Street NW., Suite 400
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REGULAR MAIL:

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80 F Street, NW.
Washington, 20001

_____
CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: JULY 27, 1998
WASHINGTON, DC