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

MEMORANDUM DATE: November 7, 2006

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: UNITED STATES AIR FORCE
12TH FLYING TRAINING WING
RANDOLPH AIR FORCE BASE
SAN ANTONIO, TEXAS

Respondent

and Case No. DA-CA-05-0503

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1840, 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 t he 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

UNITED STATES AIR FORCE 12TH FLYING TRAINING WING RANDOLPH AIR FORCE BASE SAN ANTONIO, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1840, AFL-CIO Charging Party	Case No. DA-CA-05-0503

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 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. §§2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **DECEMBER 11, 2006**, and addressed to:

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

SUSAN E. JELEN
Administrative Law Judge

Dated: November 7, 2006
Washington, DC

OALJ 07-03

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

UNITED STATES AIR FORCE 12TH FLYING TRAINING WING RANDOLPH AIR FORCE BASE SAN ANTONIO, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1840, AFL-CIO Charging Party	Case No. DA-CA-05-0503

Michael A. Quintanilla, Esquire
For the General Counsel

Phillip G. Tidmore, Esquire
For the Respondent

Neville Cartwright
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. §7101, *et seq.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (hereinafter the Authority), 5 C.F.R. Part 2423.

On August 3, 2005, the American Federation of Government Employees, Local 1840, AFL-CIO (Union or Local 1840) filed an unfair labor practice charge in this matter against the U.S. Air Force, 12th Flying Training Wing, Randolph Air Force Base, San Antonio, Texas, (Respondent or Randolph AFB). (G.C. Ex. 1(a)) On April 19, 2006, the Regional Director of the Dallas Region of the

Authority issued a Complaint and Notice of Hearing, which alleged that the Respondent violated section 7116(a)(1) and (5) of the Statute by failing and refusing to negotiate the disapproved portions of a collective bargaining agreement.[1] (G.C. Ex. 1(c)) On May 15, 2006, the Respondent filed an answer to the complaint, in which it admitted certain allegations while denying the substantive allegations of the complaint. (G.C. Ex. 1(l)).

A hearing was held in San Antonio, Texas on July 20, 2006, 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 General Counsel and the Respondent filed timely post-hearing briefs which have been fully considered.[2]

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

Randolph AFB is an activity of the United States Air Force, which is an agency under 5 U.S.C. §7103(a)(3). (G.C. Ex. 1(c), 1(l); Tr. 11-12) During all times material to this matter, Linda Cotner occupied the position of Labor Management Relations Officer, and was a supervisor and/or management official under 5 U.S.C. §7103(a)(10) and (11), and acted on behalf of the Respondent. (G.C. Ex. 1(c), 1 (l); Tr. 86) Cotner retired in March 2006. (Tr. 86)

Local 1840 is a labor organization under 5 U.S.C. §7103 (a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent. Local 1840 represents several bargaining units, including two separate non-appropriated fund (NAF) units of employees at Randolph AFB, a NAF off-base unit (AF Services)

[1] At the hearing the General Counsel (GC) moved to amend the first sentence of paragraph 9 of the complaint to include a second date of January 26, 2000. The Respondent had no objection and the motion to amend was granted. The first sentence of paragraph 9 therefore now reads: "On May 13, 1999 and January 26, 2000, representatives of Respondent and the Union signed a ground rules agreement which included the following language . . . ." The remainder of paragraph 9 was not changed. (G.C. Ex. 1(c); Tr. 10-11)

[2] The Respondent filed an unopposed Motion To Correct Hearing Transcript in this matter. The motion is granted and the transcript is corrected as noted in Appendix A.

and a NAF on-base unit (12th Services). This matter concerns negotiations for a new collective bargaining unit for the NAF on-base unit. (G.C. Ex. 1(c), 1(l); Tr. 21-22, 84) James E. Parson, an appropriated fund employee, was President of Local 1840 from July 2003 until he retired in November 2005. (Tr. 70-71, 83, 84)

The parties began the negotiations for a collective bargaining agreement for the NAF on-base unit in 1998. The Union submitted its initial ground rules proposal on August 21, 1998. (G.C. Ex. 2; Tr. 25) The parties engaged in negotiations and on May 13, 1999, reached agreement on most of the ground rules, with the exception of section 6, which dealt with actual negotiating time at the table and preparation time. (G.C. Ex. 3; Tr. 27) With the assistance of the Federal Mediation and Conciliation Service (FMCS), the ground rules agreement was completed and signed on January 26, 2000. (G.C. Ex. 3A; Tr. 27-29) Section VIII Conclusion of Negotiations contained the following language:

> It is understood that both parties have the full authority at any negotiating session to commit to a mutually agreeable position. The articles agreed upon will become contractually binding when signed by the Union President, ratified by the Union membership, and signed by the 12th Support Group Commander and approved by DOD.

(G.C. Exs. 1(c), 1(l), 3 at page 4, 3A at page 4; Tr. 30)

According to the unchallenged testimony of Sherry Cardenas, National Vice President for AFGE 10th District, who assisted Local 1840 in the preparation and negotiations for the new collective bargaining agreement, this article was specifically inserted in the ground rules to facilitate the bargaining unit employees having representation as soon as possible. "Contractually binding", as set forth in the ground rules, meant that each of the parties would comply with the agreed, ratified and approved articles or portions of articles of the collective bargaining agreement. (Tr. 20, 21, 31)

The parties reached agreement on a collective bargaining agreement and after it was ratified by the Union membership, and signed by the Commander, it was submitted to the DOD, Field Advisory Services Division (FAS), for review. (Tr. 30, 87) On March 20, 2003, the FAS returned the agreement, stating:

> The subject agreement, executed on February 18, 2003 has been reviewed pursuant to 5 U.S.C. § 7114 (c). It is acknowledged that the parties bargained in good faith to reach an agreement; however, there are sections of the contract that do not conform to law, rule and/or regulation. Because of this, the contract is disapproved. . . .

The letter goes on to identify the specific articles and sections that were disapproved, with the reasoning set forth.[3] The letter concludes by stating:

> The parties to this agreement may, by mutual consent, implement its provisions minus those provisions disapproved in this letter. If the parties elect to do this, they should then submit to this office for approval a document signed by both parties agreeing to implement all agreement provisions not disapproved in this letter. In the alternative, the parties may revise the language and resubmit the contract for approval at a later time. The documentation of a revised contract as specified above should be forwarded to this office by the most expeditious means as soon as possible after it is signed by the parties. The effective date of the agreement will be the date the additional documentation is approved by this office or a later date specified by the parties.

(G.C. Ex. 4, pages 1 and 7)

Cotner received a faxed copy of this letter on March 20, 2003. On the same day, she faxed at least one copy of the FAS letter to the Union. Cotner further testified that the Respondent's Chief Negotiator, Cheryl Johnson, was leaving the agency and attempted to complete the contract prior to her departure. She contacted the Union Chief Negotiator, Joe Hendrix, several times regarding getting together to complete the contract. The Union did not respond to these contacts from the Respondent. (Tr. 87-89)

Neville Cartwright has been a steward and NAF Vice President since February 2003. He is a member of the NAF off-base unit and is located off-base. He was involved in drafting proposed language for both the on-base and off-base

---

[3] This letter specifies at least 29 sections of various articles that the FAS could not approve and suggested alternative language for most of the articles.

NAF contracts and he was the Chief Negotiator for the Union in the negotiations for the NAF off-base contract. (Tr. 39-41). Sometime during December 2003, Parson asked Cartwright if he would finalize the negotiations for the NAF on-base contract. Cartwright agreed to do so. (Tr. 42, 64, 71)

In February 2004, Cartwright informed Cotner that Parson had asked him to be the Chief Negotiator for the Union on finalizing the NAF on-base contract. Cartwright indicated that he thought the negotiations would be fairly straightforward since the parties only had to finalize those few items that had come back from FAS. (Tr. 43, 64) Cotner told him that she was tied up with the off-base contract and preferred not to start negotiations until the off-base contract was completed. (Tr. 44, 95) According to Cartwright, during this conversation, Cotner did not tell him that he was not authorized to negotiate on behalf of NAF. (Tr. 44) Cotner asserts that she told him that she needed a designation letter from the Union. (Tr. 112-113) Cartwright explained at the hearing that he thought the negotiations on the off-base contract would be concluded in a few weeks and he agreed to postpone the negotiations on the on-base contract. (Tr. 45) The NAF off-base contract was completed in September or October 2004. (Tr. 45)

According to Cotner, in late September 2004, Parson came to her office to discuss resuming the NAF on-base contract. Cotner told Parson that the Union had abandoned the contract, but the Agency was willing to negotiate, but at the ground rules level. Parson agreed that it had been a long time and did not know why the Union had not come back to the table. According to Cotner, Parson agreed that it would be best that the parties go back to the ground rules. (Tr. 89-91, 96-97) Rodney Morris, who worked next to Cotner, was also present and asserted that Parson agreed that starting over would probably be the route to take instead of trying to recapture things that were 18 months to two years old. (Tr. 137-138) At some time the parties discussed using Air Force Manual 34-310 (AF-MAN 34-310). Parson asked Cotner to draft something to that effect. (Tr. 137-138) Jesse M. Solano, Chief of Labor and Employee Relations, testified that Cotner advised him in October 2004 that she had negotiated an agreement with Parson to start negotiations on the NAF contract from the beginning. (Tr. 145-146) He also met with Parson in mid-October 2004 and Parson concurred that he had an agreement with Cotner on starting up the new NAF on-base contract from the beginning, including ground rules. (Tr. 146)

Parson denied that he agreed to negotiate anything. He did admit that during a discussion, it was his personal view that starting over might not be a bad idea. But since the Union had a chief negotiator, that person would make all the decisions regarding negotiations. Parson was unclear on the dates of these meetings, but was sure that he never agreed to start negotiations from scratch with Cotner, Solano or Morris. He never agreed that the Union would have to negotiate new ground rules. And he denies that he was ever involved in any discussion on ground rules. (Tr. 77-78)

On October 25, 2004, Parson, as Union President, submitted a letter to Cotner (drafted by Cartwright), notifying the Respondent that Neville R. Cartwright had been appointed the Union's Chief Negotiator for the ongoing NAF contract negotiations. The letter indicated an effective date of December 16, 2003. In the letter, the Union also requested that the NAF contract negotiations with the 12th Flying Training Wing, Randolph Air Force Base, Texas restart immediately.

(G.C. Ex. 5; Tr. 45-46, 72)

Cartwright made attempts to contact Cotner by telephone in November and December 2004. He and Cotner had a discussion in December 2004, in which she stated that she did not even want to talk about negotiating the new contract until after the new year. Cartwright did not say anything in response and did not attempt to contact Cotner again until January 2005. (Tr. 47)

Sometime after January 2005, Parson talked with Cotner about the negotiations at Cartwright's request. Parson then informed Cartwright that Cotner wanted to start the negotiations from scratch. (Tr. 48) On February 15, 2005, Parson sent a follow-up request to Cotner, requesting the immediate restart of the NAF contract negotiations. The letter stated, in part, "The Union requests a restart of the contract negotiations where they left off. Starting over from scratch is not in the best interest of the Union. The attached signed and ratified Negotiated Agreement constitutes the Unions (sic) proposal. Items still to be worked out are contained in the letter from the DOD Civilian Personnel Management Service." (G.C. Ex. 6; Tr. 48-49, 72)

During this same time frame, the parties began discussions over a new lease agreement for the Union office. In October 2002, Randolph Air Force Base and Local 1840 had entered into an agreement regarding the union office in Building 201. Under the agreement, the agency waived the rent to the union office for the duration of the NAF

contract. (G.C. Ex. 7; Tr. 50) The Union was interested in keeping the office without owing rent. The Respondent proposed a Lease Agreement, in which it agreed to waive the rent to the union office in Building 201 for a period of five years. In exchange, the Union would agree to forgo negotiations on the 12th Mission Support Group/Services NAF contract and the appropriated unit contract for the time period mentioned above. (G.C. Ex. 8; Tr. 52, 73-74) On April 4, 2005, the Union submitted a counterproposal, in which the Respondent would waive the rent to the Union office for ten years, with up to five, five-year extensions. The Union also proposed that the parties agree to finalize the NAF 12th Mission Support Group contract by limiting the negotiations to the items outlined by the letter from DOD FAS and that the negotiations would recommence no later than April 18, 2005. (G.C. Ex. 9; Tr. 52) No agreement was reached and the Union eventually signed a lease agreement for the Union office in which it is required to pay for the space. According to Cotner, the Union has not actually paid on the lease agreement.

On April 25, 2005, Cotner sent a letter to Parson, stating:

> 1. Management has been in continued contact with you regarding the 12 SV NAV Contract since on or about 25 Oct 04. It is management's contention from numerous discussions that the union was amicable to rent free facilities in lieu of a NAF contract. However, on 18 Apr 05 management was notified by Mr. Cartwright that the union had rejected management's offer. Therefore on or about 16 May 05 negotiations of a new contract will commence with discussion of the ground rules.
>
> 2. Per our discussions regarding the status of the old NAF negotiations it was my understanding that you had concurred that the base NAF negotiations would start over at ground zero. Management does not accept the union's proposal of reentering negotiations using the outdated 1999-2003 proposals; as laws, rules, regulations, and leadership have changed since the union chose not to respond to management's request to reenter negotiations on or about 20 Mar 03.

(A. Ex. 3)

Cartwright met with Cotner in April 2005, and she informed him that she had invited Parson to the meeting.

Cartwright told her that he was the Chief Negotiator and he was ready to negotiate. Parson did not attend the meeting and since Cotner would not negotiate without him, the meeting ended after an hour and a half. (Tr. 57-58)[4]

On May 11, 2005, Cotner sent a memorandum to Parson and Cartwright stating "The parties are not at Impasse. Management stands firm that there was an agreement between union and management, prior to Mr. Cartwright's delegation as union spokesperson, to start at ground zero as stated in the 25 Apr 05 letter." (A. Ex. 4)

Beginning in late May 2005, Cotner and Cartwright exchanged a series of emails with Mike McMillion of the Federal Mediation and Conciliation Service (FMCS). The Union was attempting to get FMCS to assist in the negotiations. Cotner asserted that the parties were not at impasse and did not need the services of FMCS. (G.C. Ex. 10; A. Ex. 5; Tr. 59-61)

On May 25, Cartwright sent an email to the parties, as follows:

> Linda: Management has had the Union's proposal that was agreed upon by James Parson, the AFGE 1840 President, and myself as the Head Negotiator for several months. Management refuses to come to the table and bargain = we are at impasse.
>
> Nothing was agreed to, nothing was put in writing, nothing was finalized during your meeting with Mr. Parson. The Union President and I are quite clear, and united, on our proposal which you have had for months without taking action. There are no internal Union matters that need to be cleared up before negotiations can begin on finalizing a ratified contract.
>
> Side Note: I have a signed note dated 23 May 2005 from James Parson, the AFGE 1840 President, stating that he "discussed" starting negotiations from ground zero with you and even discussing it was a error in judgement on his part.

(G.C. Ex. 10, pages 5 and 6)

---

[4] Cotner concurs that such a meeting with Cartwright occurred, but she sets the date for June 1, 2005. I do not find either date of any particular significance.

On May 28, 2005, Parson sent an email to Cartwright, stating that he spoke with Cotner about starting the NAF contract from scratch, but no formal agreement was reached. He stated that he informed her that Cartwright was the Chief Negotiator and she should talk to him. Cartwright then forwarded this message to Cotner and McMillion. (G.C. Ex. 10, page 4)

The parties agreed to meet on June 1, without the services of FMCS. (G.C. Ex. 10; A. Ex. 5) On June 2, the parties did meet. Present for the Union were Cartwright and Parson. Present for the Respondent were Cotner and Morris, an Employee Relations Specialist. Cartwright indicated that the Union was ready to negotiate. Cotner told them that the Respondent was not interested in negotiating the contract except by starting over. Further, she stated that the Respondent also wanted new ground rules. (Tr. 61, 104)

The parties have not met since June 2 regarding the negotiations for the NAF on-base collective bargaining agreement. No part of the 2003 agreement has been implemented.

ISSUE

Did the Respondent violate section 7116(a)(1) and (5) of the Statute by refusing to bargain with the Union over the disapproved portions of the NAF on-base contract unless the Union agreed to negotiate an entirely new collective bargaining agreement.

Positions of the Parties

General Counsel

The GC asserts the Respondent's actions throughout this matter clearly demonstrate its failure to approach the negotiations with a sincere resolve to reach a collective bargaining agreement. This is demonstrated by the hurdles that the Respondent placed in the Union's path to negotiation, including Cotner's refusal to recognize Cartwright as the Chief Negotiator for the NAF on-base contracts; Cotner's refusal to even discuss renegotiations while the NAF off-base contract was being negotiated; Cotner's refusal to provide Cartwright with an electronic copy of the NAF on-base contract; Cotner's refusal to renegotiate during the holidays and until after the new year; Cotner's attempts to circumvent Cartwright by not making herself available to meet with him and continuing to deal primarily with Parson; and Cotner's attempted use of the Union office lease to avoid contract negotiations.

The Union, however, persevered and continued to request negotiations on the disapproved portions of the contract. The GC asserts that the Respondent's two main arguments, that the Union, by President Parson, made an oral agreement to negotiate an entirely new contract in September 2004 and that the Union abandoned the NAF on-base contract and thus waived its right to implement the provisions approved in the 2003 letter from FAS, must be rejected.

The GC first denies that Parson and Cotner had an agreement to negotiate the NAF on-base contract from scratch. At this meeting in September 2004, Cotner attempted to convince Parson that the Union should agree to disregard the contract sent to FAS in 2003, and instead implement AF-MAN 34-310 with a few additions for Union representation and official time. The GC asserts, however, that the Respondent was unable to demonstrate through evidence on the record how any of the things Cotner described to Parson necessitated negotiating an entirely new contract. Cotner was not even able to credibly testify as to the contents of the negotiated contract and, therefore, had no basis on which to conclude that the passage of time, or changes to the negotiators or any rules or regulations precluded implementing provisions agreed upon in the original negotiations or negotiation of the disapproved provisions. The GC further points to the testimony of Rodney Morris and argues that while Parson may have "basically agreed that starting over would probably be the best route" (Tr. 137), his then asking for a proposal from management, does not constitute entering into an agreement. Parson's denial of this oral agreement, as well as Cotner's testimony that Parson agreed that going back to the ground rules should happen but that he had to convince Cartwright, further indicates that the Respondent has failed to establish the existence of the oral agreement. This lack of an agreement is further demonstrated by the communications from the Union from October 2004 through June 2005, in which the Union clearly did not agree to negotiate an entirely new contract.

The GC further rejects the Respondent's position that the Union abandoned the negotiations of the NAF on-base contract. The Respondent relies on the timing of the Union's attempts to renegotiate the disapproved portions of the contract. According to the GC, however, the evidence demonstrates that the delay between the disapproval of certain portions of the contract and the Union's first attempts to renegotiate those portions was grounded in several intervening events involving the leadership of the Union. Further, the Union represents three separate units

at the Respondent and has to deal with issues other than those involving the NAF on-base unit. Therefore, delay in starting negotiations on the disapproved portions of the contract was eminently reasonable.

The GC points out that the parties' ground rules agreement contained the following language: "The articles agreed upon will become contractually binding when signed by the Union President, ratified by the Union membership, and signed by the 12th Support Group Commander and approved by DOD." (G.C. Ex. 3A, page 4) The language was inserted into the ground rules agreement to ensure that some version of the contract would be in place as soon as possible, in an attempt to prevent the very type of delay that occurred here. The articles presented to FAS were, in fact, (1) signed by the Union President, (2) ratified by the Union membership, (3) signed by the 12th Support Group Commander, and (4) approved by DOD. In addition, the March 2003 letter from FAS specifically provided that, "The parties to this agreement may, by mutual consent, implement its provisions minus those provisions disapproved in this letter." [G.C. Ex. 4, page 7] Since the ground rules represented the "mutual agreement" described in the letter, the executed and approved provisions should have been treated as contractually binding. Even if one were to accept Respondent's argument that the Union had not timely requested to re-negotiate the disapproved portions of the contract or had waived the re-negotiation of the disapproved provisions through abandonment, the approved portions of the contract -- the majority of the contract -- became effective upon approval, per the ground rules agreement. *See Department of the Interior, National Park Service, Colonial National Historical Park, Yorktown, Virginia*, 20 FLRA 537, 541 (1985) (*Yorktown*). (In footnote 6 to the opinion addressing agency head approval, the Authority notes, "Of course, the parties may agree to implement all provisions of their local agreement not specifically disapproved by the Agency head."); *U.S. Dep't. of the Army, Watervliet Arsenal, Watervliet, New York*, 34 FLRA 98, 105 (1989); *Patent Office Professional Association*, 41 FLRA 795, 802 (1991).

Ultimately, Respondent's conduct on June 2, 2005, is representative of its conduct with respect to all of the Union's attempts to negotiate the disapproved portions of the contract. While Respondent may, incorrectly, argue that questions about the Union's position existed before June 2, there is no doubt that the issue was put squarely before Respondent on that day. In this respect, the Union stated that it would not agree to negotiate an entirely new collective bargaining agreement and wanted to bargain only

the provisions not approved by FAS. Respondent's insistence that the Union bargain an entirely new contract demonstrates that Respondent unilaterally created a condition without which it would not bargain with the Union. Taken together, all of Respondent's tactics clearly demonstrate that Respondent has failed in its obligation to approach the negotiation of the disapproved portions of the NAF on-base contract with a sincere resolve to reach a collective bargaining agreement.

Respondent

The Respondent framed the issue in this matter as follows: Did the Respondent violate section 7116(a)(1) and (5) of the Statute by refusing to negotiate only on the disapproved portions of the contract with the Union when the Union had agree (sic) to begin negotiations on an entirely new contract beginning with new ground rules?

The Respondent asserts that it has not violated the Statute as alleged in the complaint. It argues first that the Union abandoned the contract negotiations after the FAS disapproval letter of March 25, 2003. Although the Respondent tried to get the Union back to the bargaining table, it was unsuccessful. It was not until September 2004 that Union President Parson discussed the contract with Cotner. At that time, he did not know why the Union had not discussed the disapproved contract earlier. The Respondent further argues that Cotner explained to Parson that the Agency did not desire to go back to the place in negotiations where FAS had disapproved the contract. Cotner based this position on the change of parties and personnel and the length of time since the contract had originally been negotiated, as well as the Union's abandonment of the contract. According to the Respondent, Parson agreed with Cotner that it was best to start over with negotiations to begin with new ground rules.

The Respondent therefore argues that it has only been trying to get the Union to do what it agreed to do, *i.e.*, negotiate from "scratch", including new ground rules. The Respondent asserts that it has always been willing to negotiate a new contract for the NAF on-base unit, and that the Union has engaged in a pattern of bad faith bargaining in this matter.

Analysis and Conclusions

Section 7103(a)(12) of the Statute defines collective bargaining as the "performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession[.]" Section 7114(b)(1) and (3) states that "[t]he duty of an agency and an exclusive

representative to negotiate in good faith under subsection (a) of this section shall include the obligation--(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;" and "(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays. . . ". *U.S. Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio,* 36 FLRA 524 (1990); *Department of Defense, Department of the Air Force, Armament Division, AFSC, Eglin Air Force Base,* 13 FLRA 492, 505 (1983).

While the parties' negotiations for the NAF on-base collective bargaining agreement have been a prolonged process, certain facts can be established. In that regard, the evidence reflects that the parties, while beginning their negotiations in 1998, eventually reached a partial ground rules agreement on May 13, 1999, and reached complete agreement on January 26, 2000. (G.C. Ex. 3 and 3A). The ground rules agreement contained a specific paragraph regarding the procedures to be used in ratification of the agreement: "It is understood that both parties have the full authority at any negotiating session to commit to a mutually agreeable position. The articles agreed upon will become contractually binding when signed by the Union President, ratified by the Union membership, and signed by the 12th Support Group Commander and approved by DOD." The GC argues that this portion of the ground rules agreement provided that, once these pre-requisites are met, those approved portions of the collective bargaining agreement would go into effect. (Tr. 20, 21, 31). The Respondent does not address this issue in its post-hearing brief.

The Authority has previously noted that the obligation to bargain a new agreement is limited only by any ground rules or procedures under which negotiations are to be conducted as agreed upon by the parties. In *Yorktown,* 20 at 541, the Authority found that the respondent activity did not violate the Statute by failing to implement any portion of the local agreement not specifically disapproved by the agency head pursuant to section 7114(c) in the absence of the parties' prior agreement. "Of course, the parties may agree to implement all provisions of their local agreement not specifically disapproved by the Agency head." (*Id.*, fn. 6) At footnote 7 of the same decision, the Authority compared *U.S. Department of Commerce, Bureau of the Census*, 17 FLRA 667 (1985) (*Bureau of the Census*), where the Authority found that the respondent activity was obligated to renegotiate a tentative agreement which the union membership had failed to ratify. In that case, by agreement of the parties, the ratification of any agreement

reached by the parties was a condition precedent to effectuation of the agreement. When the Union membership failed to ratify the agreement, the parties were obligated to return to the bargaining table to negotiate until an acceptable agreement was reached. This obligation to bargain, in the *Bureau of the Census* case, was limited by the agreement of the parties that no new issue could be introduced into the bargaining beyond 12 hours after the commencement of negotiations.

In this matter, the evidence reflects that the Union and the Respondent agreed to a procedure that allowed for the signing of the agreement, ratification by the Union membership and then review under section 7114(c) by FAS. The unchallenged testimony of Sherry Cardenas, AFGE National Representative, set forth the understanding of the parties that this provision would allow for any portions of the collective bargaining agreement not disapproved by FAS to become effective. Since the Respondent makes no argument against this position, and the Authority has indicated that the parties may make such an agreement, I find that the parties' ground rules agreement did allow such implementation.

I am aware that neither the Union nor the Respondent raised this issue at any time after the FAS disapproval letter of March 2003. There is no indication that any Union official ever presented this argument to the Respondent; and no evidence that the Respondent ever addressed this issue to the Union. Whether these actions are due to ignorance of the content of the ground rules agreement or a deliberate attempt to disregard those contents, the ground rules agreement remains a legitimate document that sets forth how the parties are to proceed once all the requirements have

been met.5 Therefore, following FAS review, the remaining provisions of the NAF on-base agreement became effective.

The question then becomes whether the Union did actually abandon the collective bargaining agreement, as argued by the Respondent. The record evidence is clear that the FAS letter was received by the parties on March 20, 2003, and the Respondent contacted the Union regarding negotiating over the disapproved portions of the collective bargaining agreement. The record evidence is also clear that the Union did not respond to these requests. The GC notes that a series of events relating to various Union officials (death of Union President in January 2003; sick leave and retirement of AFGE National Representative starting in April 2003; discipline of NAF Vice President) caused a great deal of internal Union confusion. The GC further notes that the NAF on-base unit was one of three bargaining units represented by the Union, each with their attendant concerns. It is not until September 2004, according to the Respondent, that the Union starts showing any interest in the NAF on-base collective bargaining agreement.

However, the evidence reflects that a Union representative first addressed the issue of the negotiations for the NAF on-base collective bargaining agreement in February 2004, when Neville Cartwright spoke with Linda Cotner about the negotiations. This occurred during the negotiations for the NAF off-base collective bargaining agreement, in which both Cartwright and Cotner were present

5
I do not find the FAS letter of March 2003, in any way changes the procedures of the ground rules agreement. The FAS letter states "The parties to this agreement may, by mutual consent, implement its provisions minus those provisions disapproved in this letter. If the parties elect to do this, they should then submit to this office for approval a document signed by both parties agreeing to implement all agreement provisions not disapproved in this letter. In the alternative, the parties may revise the language and resubmit the contract for approval at a later time. The documentation of a revised contract as specified above should be forwarded to this office by the most expeditious means as soon as possible after it is signed by the parties. The effective date of the agreement will be the date the additional documentation is approved by this office or a later date specified by the parties." Since the parties had already agreed to such a procedure in their ground rules agreement, the remainder of the FAS letter concerns its own procedures for dealing with any revised agreement.

on behalf of the Union and the Respondent, respectively. Although Cartwright did not have any official position with regard to the on-base agreement at that time,[6] he was a representative of the Union and expressed an interest in renewing the negotiations of that collective bargaining agreement. Cotner, clearly not interested in negotiating the NAF on-base agreement, expressed the position that she did not want to discuss that agreement until the NAF off-base agreement was concluded. Cartwright agreed and the Union did not pursue the on-base agreement until the NAF off-base agreement was concluded.

Therefore, although the Union did not respond to the immediate requests from the Respondent, it did indicate its renewed interest in the on-base agreement in February 2004, and only delayed further discussion at the request of the Respondent. Given the length of time it takes both these parties to proceed with labor relations issues, I cannot find that a delay of one year could in any way be considered an abandonment.

The next issue to be addressed is the Respondent's defense that the Union, through Parson, made an agreement with the Respondent that negotiations for the NAF on-base unit would start over from ground rules, rather than starting with the proposals disapproved by FAS. The Respondent argues that in September 2004, Parson agreed to these conditions with the Respondent's representatives. The Respondent further argues that it had a practice with Parson of making oral agreements and therefore there was no need to put this agreement in writing. Parson confirms that he discussed starting the negotiations from "scratch", although he denies that he ever made an agreement to do so.

In my view, the evidence is clear that Parson and Cotner had discussions about restarting the negotiations on the NAF on-base collective bargaining agreement in September 2004. I credit both Cotner and Morris that these discussions first took place in September 2004 in Cotner's office. I find Parson's testimony regarding the dates of his discussions vague and unreliable. I further find that Parson agreed with Cotner that starting over with the negotiations would be a good idea, considering the time that

---

[6] Although the GC argues that Parson named Cartwright as the Chief Negotiator for the NAF on-base unit in December 2003, the Union did not give any written declaration to the Respondent until Parson's letter dated October 25, 2004. I do not find that this letter effectively back dates the Respondent's notice of Cartwright's position to December 2003.

had passed and the changes in personnel involved. However, these discussions were never more than general in nature, and never resulted in a clear and concise agreement. *Internal Revenue Service, North Florida District, Tampa Field Branch, Tampa, Florida*, 55 FLRA 222 (1999). I specifically credit Parson's testimony that he never made an agreement to start the negotiations from the beginning; I find his testimony to be consistent and sincere, while I find Cotner's testimony self-serving and not candid.

The evidence also shows that the Respondent continued to have conversations with Parson in various attempts to get him to agree to restart the negotiations from the beginning, indicating that there had never been a specific agreement. Moreover, as noted by Morris, Parson asked that the Respondent submit a proposal in writing, but there is no evidence that this was ever accomplished.[7] And although the Respondent argues that Cotner and Parson had a practice of dealing with each other on an oral basis, the total evidence demonstrates that, at least with regard to contract negotiations, the parties dealt with each other with written proposals and final agreements.

The record evidence also establishes that in October 2004, the Union identified Neville Cartwright as its Chief Negotiator for the on-base negotiations. It is also apparent that the Respondent, through the actions of Cotner, did not wish to deal with Cartwright and instead tried to continue to deal with Parson. I credit Cartwright's testimony that he tried to contact Cotner in November and December 2004. When he finally reached her in December 2004, she expressed her position that she was not willing to even discuss the issue until after the new year. Cartwright acquiesced to her request and did not contact her until January 2005, when he again had difficulty reaching her. He at last sent Parson to discuss the negotiations. When Parson relayed Cotner's position that the negotiations should start from "scratch", Cartwright sent his February 2005 letter, outlining the Union's position and attaching the Union's proposals. The Respondent, through Cotner, apparently made no effort to respond to Cartwright's letter.

Instead, the economic issue of the lease on the Union office is raised as another attempt by the Respondent to avoid future negotiations for collective bargaining

[7] I find that Morris' testimony that this was probably accomplished insufficient. Cotner never testified that she, in fact, drafted any proposals for the ground rules or the new contract, and there is no evidence that any such Respondent proposals existed.

agreements for both the NAF on-base and the Union's appropriated fund units. While Cotner indicated that these discussions started in the fall of 2004, it appears more likely that these discussions began in March and April of 2005, after the Union's proposals of February 2005. The Union, however, did not acquiesce in this side issue.

Cartwright continued to request that the parties restart the negotiations on the NAF on-base collective bargaining agreement. His attempt to attain the assistance of the FMCS mediator was rebuffed by the Respondent, as it insisted that it had an agreement to start the negotiations over, starting with ground rules. The parties had one meeting in which they sat down to discuss negotiations on a face-to-face basis, on June 2, 2005. As noted above, the Respondent insisted that the negotiations should begin anew, starting with ground rules, although it presented no proposals on either the ground rules or any substantive issues. While the Respondent was interested in using the AF-MAN 34-310 as the basic agreement, with additional proposals for Union representation and official time, there is no evidence that it even had copies of the AF-MAN or any other additional substantive proposals. The Union was prepared to negotiate, starting with the proposals that FAS had disapproved in March 2003. The parties were unable to get past the starting point for the negotiations, and there have been no further negotiations.

After a complete review of the evidence in this matter, *U.S. Department of the Air Force, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 36 FLRA 524, 531 (1990) ("In determining whether a party has fulfilled its bargaining responsibility, the totality of the circumstances in a case must be considered."), I find that the totality of the circumstances in this case supports the conclusion that the Respondent did not bargain in good faith. I find that the record establishes the Respondent did not approach negotiations with a sincere resolve to reach agreement on the proposals submitted by the Union. Rather, in my view, the record establishes that the Respondent successfully avoided bargaining on the Union's proposals.

In that regard, I find that the Union did not abandon the NAF on-base collective bargaining agreement that was signed by the parties, ratified by the Union membership, and submitted for 7114(c) review. Rather, the parties had an agreement that allowed the remaining provisions after the 7114(c) review to become effective. Finally, I find that the Respondent attempted to avoid dealing with the Union's Chief Negotiator and made various attempts to avoid any

negotiations over the NAF on-base collective bargaining agreement. Although the Respondent has continually asserted that it was always willing to negotiate on the collective bargaining agreement, I find that its actions contradict that assertion.[8]

Having found that the Respondent violated the Statute by refusing to negotiate with the Union over the NAF on-base collective bargaining agreement, in violation of section 7116(a)(1) and (5) of the Statute, I recommend that the Authority issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Rules and Regulations of the Authority and section 7118 of the Federal Service Labor-Management Relations Statute (Statute), it is hereby ordered that the United States Air Force, 12th Flying Training Wing, Randolph Air Force Base, San Antonio, Texas, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with the American Federation of Government Employees, Local 1840, AFL-CIO (Union), the exclusive representative of certain of our employees, by refusing to bargain the disapproved portions of the collective bargaining agreement, by insisting that the Union agree to bargain an entirely new contract, including ground rules.

(b) In any like or related manner, interfering with, restraining, or coercing its 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) Negotiate, with a sincere resolve to reach a collective bargaining agreement, the disapproved portions of

---

[8] The Respondent's argument that it was always willing to negotiate a new collective bargaining agreement with the Union would have been more convincing if it had made any effort to present any proposals to the Union. A willingness to bargain should also include a willingness to make proposals to the Union. A general position that they wanted to start over with ground rules proposals, without more than that, is not convincing that the Respondent was, in fact, actually willing to bargain as required by the Statute.

the NAF on-base collective bargaining agreement with the Union.

(b) Post at its facilities, where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Authority. Upon receipt of such forms they shall be signed by the Commander of the 12th Flying Training Wing, 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.

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

Issued, Washington, DC, November 7, 2006

SUSAN E. JELEN
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 United States Air Force, 12th Flying Training Wing, Randolph Air Force Base, San Antonio, Texas, violated the Federal Service Labor-Management Relations Statute (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 with the American Federation of Government Employees, Local 1840, AFL-CIO (Union), by refusing to bargain the disapproved portions of the NAF on-base collective bargaining agreement unless the Union agrees to negotiate an entirely new contract, including ground rules.

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 Statute.

WE WILL meet with the Union at reasonable times and intervals with a sincere resolve to reach an agreement, on the NAF on-base collective bargaining agreement.

_____

United States Air Force
12th Flying Training Wing
Randolph Air Force Base
San Antonio, Texas

Dated: _____
By: _____
(Signature) (Commander)

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 its provisions, they may communicate directly with the Regional Director, Dallas Regional Office, whose address is: Federal Labor Relations Authority, 525

Griffin Street, Suite 926, LB-107, Dallas, Texas 75201-1906, and whose telephone number is: 214-767-6266.

Appendix A

Pages	Lines	
27	5	Barryhill to Berryhill
27	17	Medication to Mediation
35	17	Barryhill to Berryhill
35	18	Barryhill to Berryhill
36	4	Barryhill to Berryhill
36	5	Barryhill to Berryhill
36	12	Barryhill to Berryhill
37	11	Barryhill to Berryhill
41	23	Barryhill to Berryhill
42	21	Barryhill to Berryhill
50	24	Barryhill to Berryhill
59	23	add Conciliation after Mediation
67	16-17	add Conciliation after Mediation
95	23	Barryhill to Berryhill
127	21	34314 to 34-310
138	5	34314 to 34-310
138	8	34314 to 34-310

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. DA-CA-05-0503, were sent to the following parties:

_____

_

CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

Michael A. Quintanilla, Esquire **7004 2510 0004 2351 2167**
Federal Labor Relations Authority
525 Griffin St., Suite 926, LB-107
Dallas, TX 75201-1906

Phillip G. Tidmore, Esquire **7004 2510 0004 2351 2174**
Air Force Legal Services Agency
CLLO, General Litigation Division
1501 Wilson Boulevard, 7th Floor
Arlington, VA 22209-2403

Neville Cartwright **7004 2510 0004 2351 2181**
AFGE Local 1840
618 Oak Drive
Converse, TX 78109

REGULAR MAIL:

President
AFGE
80 F Street, NW
Washington, DC 20001

DATED: November 7, 2006
Washington, DC