

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
NORTHEAST REGION
BOSTON, MASSACHUSETTS

and

LOCAL 3432, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 08 FSIP 67

DECISION AND ORDER

Local 3432, American Federation of Government Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of the Interior, National Park Service, Northeast Region, Boston, Massachusetts (Employer or NPS).

After investigation of the request for assistance, which arose from negotiations over a reopener provision in the parties' collective-bargaining agreement (CBA), the Panel determined that the parties should resume negotiations during a 45-day period with the assistance of the Federal Mediation and Conciliation Service (FMCS). If a complete settlement were not reached during this period, any remaining issues would be resolved through single written submissions.^{1/} The parties were informed that after considering the entire record, the Panel would take whatever action it deems appropriate to settle the impasse, which may include the issuance of a *Decision and Order*. When the parties' resumed negotiations failed to result in a

^{1/} The request for assistance initially included Article 15, Arbitration, and Article 4, Union Representation, as articles at impasse. Article 15 has been withdrawn by the Union leaving only Article 4 remains in dispute.

complete settlement of the dispute, final offers with supporting statements of position were submitted pursuant to this procedure and the Panel has now considered the entire record.

BACKGROUND

The Employer's mission is to preserve, unimpaired, the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. It also cooperates with partners to extend the benefits of natural and cultural resource conservation and outdoor recreation throughout this country and the world. The Union represents approximately 500 non-professional, non-supervisory employees who mainly work as Park Rangers and maintenance workers. The CBA covering these parties expires in 2008; however, its terms will remain in effect until a new agreement is effectuated.

ISSUES AT IMPASSE

The parties disagree over various issues in Article 4 including the number of Union representatives within the Northeast Region and the amount of official time for the Local Union President.

POSITIONS OF THE PARTIES

1. The Union's Position

On the key issues, the Union proposes that each of the 15 National Parks in the Northeast Region have one representative on-site, that these representatives be granted reasonable and necessary official time,^{2/} and that the Local President be granted 100-percent official time. It also proposes numerous other changes to Article 4, including recognizing an EEO meeting as a formal discussion, eliminating the process to request official time, and allowing official time for the following purposes: lobbying state and Federal government officials and

^{2/} See Attachment A for the complete text of the Union's final offer. While it does not specifically mention the number of representatives it wishes to have, its offer requires the Employer to recognize all Local representatives it identifies. In its supporting statement, the Union states that it represents employees at 15 National Parks in the Northeast Region and that it wants an on-site representative at each park.

preparation for and presentation of grievances, EEO complaints under the negotiated grievance procedure, arbitration hearings (as witnesses, litigators and technical representatives), FMCS sessions, and unfair labor practice complaints.^{3/}

The Union believes it is necessary to have an on-site representative at each Park because that individual would have first-hand knowledge of the Park's workplace culture and labor-management history and be able to resolve more issues informally. The current practice of having 7 representatives for 15 Parks no longer works because it is difficult to secure a representative in a timely manner, especially in the case of an emergency. The Union also states there is a concern regarding the distance between the Parks within the Northeast Region, which in some locations is approximately 250 miles. In addition, the traveling time among the three New York City sites can be at least 2 hours in each direction. These considerable distances and travel times, along with the uncertainty of traffic conditions, leads to a disproportionate use of time for commuting as compared to actual meeting time. Thus, according to the Union, having on-site representatives would reduce the use of official time.

2. The Employer's Position

The Employer proposes to maintain the current wording in Article 4 of the CBA which establishes one Union representative for each of the seven Organizational Groups within the Northeast Region. In addition, all representatives, including the Local Union President, would continue to be authorized a reasonable amount of official time for the purpose of engaging in representational activity.^{4/}

The Employer says the current system is sufficient as the Organizational Groups within the Northeast Region are in close geographical proximity. Moreover, there is a procedure in place under the CBA to increase the number of stewards when new Parks are added to the Northeast Region, and on two occasions additional stewards have been added when new Parks came on line. During the past 3 years, the Union has used a total of approximately 400 hours of official time throughout the

^{3/} The Union has not addressed the reasons for many of these proposed changes.

^{4/} See Attachment B for the complete text of the Employer's final offer.

Northeast Region. The official time used by the Union does not justify an increase in the number of stewards nor does it support granting the Local Union President 100-percent official time. Finally, no bargaining-unit employees or Union representatives have been denied the use of official time under Article 4, nor have any grievances been filed relating to the failure of the Union to properly represent its bargaining unit.

CONCLUSION

After carefully considering the record established by the parties in this case, we conclude that the Union has failed to demonstrate a need for the changes it has proposed to Article 4. However, a union may designate its representatives without reference to organizational levels and segments when dealing with agency management in the performance of its representational functions.^{5/} Accordingly, we order the parties to adopt the Employer's final offer modified by the Employer only to the extent necessary to make it consistent with statutory requirements.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted by the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel, under 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the following:

^{5/} See, for example, American Federation of Government Employees, AFL-CIO and U.S. Air Force, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 4 FLRA 272. In addition, 5 U.S.C. § 7102 states, among other things, that "each employee" has the right "to act for a labor organization in the capacity of a representative."

The parties shall adopt the Employer's final offer on Article 4, modified by the Employer only to the extent necessary to make it consistent with statutory requirements regarding the number and location of Union representatives in the Northeast Region.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

November 26, 2008
Washington, D.C.

Union Counter Proposal 2

(07/15/08)

ARTICLE 4

UNION REPRESENTATION

Section 1

The Employer will recognize representatives as designated by AFGE Local 3432 as the exclusive representative of all employees included in the unit for which it holds certification. The Union shall supply the Labor and Employee Relations Specialist in the Northeast Regional Office, on written request, a list of all Local representatives.

Section 2

The representatives of the Union will be granted official time to handle Union representational duties in the following manner:

President - 100% official time

All other representatives - reasonable and necessary official time

The duties of a union representative include the following:

- (1) Meet with BUE to discuss the contract, personnel policies and practices, or other matters concerning conditions of employment related to a grievance or potential grievance;
- (2) Meet with BUE and management officials to resolve or present a formal or informal grievance;
- (3) Attend any formal discussion between the Employer and employee(s) concerning personnel policies, practices, or other matters concerning conditions of employment;
- (4) Represent employees in connection with an investigation, if the employee reasonably believes the investigation may result in disciplinary action against them, and the employee requests representation (Weingarten Rights).
- (5) Preparation and presentation of informal grievances.
- (6) Preparation and presentation of Formal grievances;
- (7) Preparation and presentation of EEO complaints under the negotiated grievance procedure.
- (8) Arbitration preparation and presentation as witness, litigator, or Technical Representative;
- (9) Participation at Arbitration hearings;
- (10) Participation at Federal Mediation and Conciliation mediation sessions;
- (11) Preparation and presentation of Unfair Labor Practice complaints;
- (12) Preparation and presentation and communication with the Employer on matters covered by this Agreement;

- (13) Preparation and presentation of representational activities related to proposed disciplinary, adverse action, or performance-based actions;
- (14) Preparation, presentation and communication with the Employer on matters not covered by this Agreement.
- (15) Lobbying State and Federal government officials.
- (16) Attend management-initiated conferences, seminars, or meetings.
- (17) Participate on committees as agreed on (not to include work group assignments in a non-union capacity); and
- (18) Participate in proceedings before the Federal Labor Relations Authority (FLRA), Merit Systems Protection Board (MSPB), or EEO when handled under the negotiated grievance procedure, or formal meetings under the EEOC Statute, in accordance with the EEOC, FLRA and MSPB rules and regulations.

Official time includes time spent on the telephone, email, or other existing communication technology. Official time for collective bargaining agreement negotiations will be negotiated separately and is not covered above.

Official time is not authorized for those activities concerned with organizing efforts and the internal management of the labor organization. Any activities performed by an employee relating to the internal business of a labor organization (including solicitation of membership, elections of labor organization officials, and a collection of dues) shall be performed during the time the employee is in a non-duty status.

Section 3

The Union is authorized to visit other work areas. Prior to his/her discussion with an employee in another shop, office, or work area, the Union representative will notify the employee's supervisor by telephone or in person. The supervisor will make the employee available at a mutually agreed on time. In such circumstances, the Union representative will be informed when the employee will be available for discussion. This activity will be conducted without loss of pay or benefits to the employee and the representative.

Section 4

The Employer agrees to notify the Union of any formal meetings with unit employees, including any EEO meetings under the EEOC Statute.

Section 5

The Union shall have the opportunity to be represented at any examination of an employee in the unit by a representative of the Employer, in connection with an investigation, if the employee reasonably believes the examination may result in disciplinary action against the employee and the employee requests representation (Weingarten Rights). Through an annual posting requirement, the Employer agrees to inform employees of their Weingarten rights. The Employer shall allow up to 24 hours for the employee to obtain an available Union representative. Telephonic representation may be allowed if necessary. In addition, the Employer shall advise the Union of any investigative meetings held with a BUE under the EEOC Statute.

Section 6

- a. Subject to operational requirements, Union officers and Stewards who can reasonably be spared will be granted reasonable amounts of official time to attend AFGE or other labor-management sponsored training of mutual benefit to the parties, available at no cost to the Employer, either for tuition or for travel and per diem. Such training may take the form of seminars, conferences, college sponsored courses and other state and local government offerings.
- b. The Employer agrees to authorize two days (2) days official time to one (1) Union Representative once every three years to attend the Union convention. The Employer and the Union recognize that training provided at such events is in the interest of both parties.
- c. The Union will provide management a copy of the training agenda prior to the approval of official time.
- d. The employer agrees to pay all expenses for Union Representatives to perform official duties while attending Employer-sponsored meetings at locations other than the duty station of the Union Representative. Expenses will be paid in accordance with government-wide travel rules and regulations.

Section 7

The Union Treasurer shall be granted reasonable official time to attend training and for completing mandatory U.S. Department of Labor/Internal Revenue Service reports/audits.

**ARTICLE 4
UNION REPRESENTATION**

Section 1.

The Employer recognizes AFGE Local 3432 as the exclusive representative of all employees included in the unit for which it holds certification. The Employer further recognizes the duly elected or appointed officers and stewards as representatives of the Union. The Union shall supply the Chief of Labor Relations for the Northeast Region, in writing, and maintain on a current basis, a list of all its representatives.

Section 2.

For the purposes of official time, the Employer agrees to recognize seven (7) stewards designated by the Union to represent bargaining unit employees. The list shown below identifies the organizational group to which stewards will be assigned. The Union shall provide the Employer a written list showing the names of the Union's authorized stewards. In the event the Union finds it necessary to replace a steward currently listed, the appointment of the replacement shall not become effective until five (5) days after the receipt of written notice of the change to the Employer. Notwithstanding this five day notification requirement, in the event of an emergency, the Union may replace a steward on a temporary basis (up to ten (10) days) by notifying the Labor Relations Specialist, NER. Only those Union stewards who are currently identified and appointed by the President of the Union will be recognized by the Employer. A steward will represent only those employees in the same organizational group as that of the steward. Only stewards designated on an emergency basis may represent employees from outside their organizational group.

ORGANIZATIONAL GROUPS

1. Statue of Liberty NM/Ellis Island IM, Manhattan Sites
2. Edison NHS, Morristown NHP
3. Gateway NRA; Sandy Hook Unit, New Jersey Coastal Heritage Trail
4. Saratoga NHP, Martin Van Buren NHS, and Roosevelt-Vanderbilt NHS
5. Sagamore Hill NHS, Fire Island National Seashore
6. Gateway NRA; Staten Island Unit, Brooklyn Unit
7. Women's Rights NHP, Ft. Stanwix NHM.

If a new park is added to the bargaining unit, they will fall within the nearest geographically located organizational group and will be represented by the steward for that group. If the new park is located more than one hundred (100) miles from any organizational group, or in the event two (2) new parks join the bargaining unit, the Union will be authorized one (1) additional steward.

Stewards will be authorized a reasonable amount of official time for the purpose of engaging in representational activity. The Union will designate one steward to be granted official time by the Employer from each of the seven (7) organization groups. The duties of a steward include the following:

- a. to meet with bargaining unit employees to discuss the contract, personnel

- policies and practices, and other matters concerning conditions of employment related to a grievance or potential grievances;
- b. to meet with employees and management officials to resolve or present a grievance;
 - c. to be present during any formal discussion between the Employer and employees concerning personnel policies, practices or other matters affecting conditions of employment; and
 - d. to represent employees in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against them and the employee requests representation.

In addition, stewards, officers, or employees as appropriate, will be authorized a reasonable amount of official time for the purpose of the following activities:

- a. to attend management initiated conferences, seminars, or meetings;
- b. to participate on committees as agreed upon (not to include work group assignments in a non-union capacity); and
- c. to participate in proceedings before the Federal Labor Relations Authority (FLRA) and Merit Systems Protection Board (MSPB) in accordance with the FLRA's and MSPB's rules and regulations.

Union officers, other than the President, shall not perform the duties of steward unless they are officially designated as stewards by the Union or they are representing a steward in his/her personal grievance.

Section 3.

Official time for representational purposes shall be scheduled in advance with the representative's supervisor. Union representatives will complete the attached form when requesting official time.

Section 4.

Before leaving the worksite, the Union representative will first obtain approval from his/her supervisor. The representative needs to tell the supervisor the general nature of the business, e.g., negotiations, grievance meetings, committee meeting, etc. Since the contract indicates that what constitutes reasonable time takes into consideration the amount of time that is necessary to accomplish the specific task for which time is requested, he/she needs to tell the supervisor approximately how long he/she expects the task to take. When the union officials return to their work-site, they need to advise their supervisor of their return.

Section 5.

Official time will be granted when necessary to bring about prompt disposition of a complaint or grievance. The union is authorized to visit other work areas. Prior to his/her

discussion with an employee in another shop, office, or work area, the Union representative will notify the employee's supervisor by telephone or in person. The supervisor will make the employee available at a mutually agreed upon time. In such circumstances, the Union representative will be informed when the employee will be available for discussion. This activity will be conducted without loss of pay or benefits to the employee and the representative.

Section 6.

The Employer agrees to notify the Union of any formal meetings with unit employees.

Section 7.

The Union shall have the opportunity to be represented at any examination of an employee in the unit by a representative of the Employer, in connection with an investigation, if the employee reasonably believes the examination may result in disciplinary action against the employee and the employee requests representation. Through an annual posting requirement, the Employer agrees to inform employees of their Weingarten rights. The Employer shall allow up to 24 hours for the employee to obtain an available Union representative. Telephonic representation may be allowed if necessary.

Section 8.

- a. The Union is entitled to data and information required to perform its representational duties as provided in Section 7114 (b)(4) of the Statute.
- b. Management will provide access to all publications and proposed new agency regulations or proposed changes thereto, to the Local President.

Section 9.

Existing employee/management past practices and relationships, as they affect the terms and conditions of employment, will not be altered or superceded without negotiations except as specifically provided in this Agreement.

Section 10.

Official time is not authorized for those activities concerned with organizing efforts and the internal management of the labor organization. Any activities performed by an employee relating to the internal business of a labor organization (including solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

Section 11.

- a. Union officers and stewards who can reasonably be spared will be granted reasonable amounts of official time to attend AFGE or other labor-management sponsored training of mutual benefit to the parties, available at no cost to the Employer, either for tuition or for travel and per diem, subject to operational requirements. Such training may take the form of seminars, conferences, college sponsored courses and other state and local government offerings.
- b. The Employer agrees to authorize two (2) days official time to one (1) Union Representative once every three years to attend the Union convention. The Employer and the Union recognize that training provided at such events is in the interest of both parties.
- c. The Union will provide management a copy of the training agenda prior to the approval of official time.

Section 12.

- a) The Union President may perform the duties of a steward at any park in the bargaining unit, at no additional travel or per diem costs to the Employer.
- b) In accordance with the provisions of this Article and upon request to the Labor Relations Specialist (Northeast Region), official time for other stewards or officers may be permitted on an as needed basis at no additional travel or per diem costs to the Employer.
- c) In the interest of saving time and money, the Employer and the Union agree that the use of other media (e.g., conference calls, e-mail) will be used whenever possible.

Section 13.

The Union Treasurer shall be granted reasonable official time for completing mandatory U.S. Department of Labor reports/audits.