

In the Matter of

DEPARTMENT OF THE NAVY
PORTSMOUTH NAVAL SHIPYARD
PORTSMOUTH, NEW HAMPSHIRE

and

LOCAL 4, INTERNATIONAL FEDERATION
OF PROFESSIONAL & TECHNICAL
EMPLOYEES, AFL-CIO

Case No. 11 FSIP 41

ARBITRATOR'S OPINION AND DECISION

BACKGROUND

Local 4, International Federation of Professional and Technical Employees, AFL-CIO (IFPTE/Union) filed a request for assistance on December 21, 2010, with the Federal Service Impasses Panel (Panel) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, to consider a negotiation impasse between it and the Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire (Navy/Employer). The dispute involves the negotiation of a Memorandum of Understanding (MOU) concerning a travel policy for "Code 206" bargaining unit employees.^{1/} The Employer's mission is the overhaul, repair and modernization of the U.S. Navy's nuclear powered submarine fleet, primarily Los Angeles-class submarines, including a full spectrum of engineering services and production shops. The Union represents about 1,500 employees, GS-5 through -13, who work in such positions as engineer, engineering technician, safety specialist, chemist, technical writer, quality assurance specialist and production controller. The parties' collective-bargaining agreement is due to expire on August 10, 2014.

After an investigation of the request, the Panel directed the parties to mediation-arbitration with the undersigned.^{2/} Accordingly, on June 15, 2011, a mediation-arbitration proceeding was held at the Panel's offices in Washington, D.C. During the mediation phase, the parties were unable to resolve their dispute thereby causing the need for the undersigned to

^{1/} "Code" is Navy-speak for a department. The Employer's 20 Codes are organized based on engineering disciplines. Code 206 is the Engineering and Planning Department. Currently, the Code 244, Code 250 and Code 290 engineering departments all have travel policies.

^{2/} Panel Member Edward F. Hartfield

convene an arbitration proceeding, allowing the parties to present their case including exhibits, evidence, and testimony. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and submissions made at the hearing. Since the record was closed at the end of the day on June 15, 2011, there were no post-hearing submissions.

BARGAINING HISTORY

Bargaining over a travel policy in Code 206 was initiated by the Union in December 2008 after it perceived unfairness in the manner in which certain unit employees were selected to travel to Pearl Harbor to work on the Advanced SEAL Delivery System project – a mini-submarine used by Navy SEALs.^{3/} Four bilateral negotiating sessions occurred between May and December 2010. The parties engaged in FMCS-assisted mediation on September 23 and November 4, 2010, for a total of 12 hours. There were three additional meetings concerning the travel policy in November and December 2010 between the Union's President, the Code 206 Chief Engineer, and the Shipyard Commander after FMCS referred the case to the Panel on November 5, 2010.

ISSUES AT IMPASSE

The Union's initial request for assistance identified four issues in dispute concerning the travel policy: (1) List Maintenance (who would maintain the trip list); (2) Off Yard Assignment Notification and Request for Volunteers; (3) Hardship Clause; and (4) Forced Trip Policy. The List Maintenance issue was resolved during the initial investigation when the Employer agreed to maintain the trip list.

FINAL OFFERS OF THE PARTIES

Before convening the hearing on this matter, I requested the parties to provide final offers for the Arbitrator. The Employer's final offers on each of the three issues in dispute are as follows:

- I. **Hardship:** Management shall not unreasonably deny an employee's hardship request. An employee who disagrees with a denial of his or her hardship request may request in writing management's reasons for the denial. Management shall respond in writing to those requests within 5 work days. Upon request by the affected employee, management shall provide two copies of its response should the employee wish to provide IFPTE with a copy. This process is not to delay or interfere with the subject travel.

^{3/} According to its website, Navy SEALs (Sea, Air and Land) are part of the Naval Special Warfare Command, and their "proven ability to operate across the spectrum of conflict and in operations other than war in a controlled manner, and their ability to provide real time intelligence and eyes on target, offer decision makers immediate and virtually unlimited options in the face of rapidly changing crises around the world."

Management believes that the majority of hardship requests deal with personal and private situations. They do not wish to divulge the nature of the hardship request without the employee's personal consent. Since another administrative office (Code 1102) is responsible for adjudicating the hardship requests, Code 206 management testified that they may not even be aware of the specific reasons for the hardship request.

- II. Forced Trip Policy:** Management shall attempt to fill these requirements at 4-week increments unless factors such as qualifications, resources, or customer requirements dictate longer durations. In cases such as those, durations may be extended, and management will notify an IFPTE official/steward via email, telephone, or face-to-face of the general conditions that dictate the extended duration. Prior to each forced trip in the assignment, management will re-solicit the trip for volunteers.
- III. Off-Yard Assignment Notification and Request for Volunteers:** Management shall attempt to fill long duration off-yard assignments where there is no volunteer(s) for the entire duration at 4-week increments unless such factors as qualifications, resources, or customer requirements dictate longer durations. In cases such as these, durations may be extended and management will notify an IFPTE official/steward via email, telephone, or face-to-face of the general conditions that dictate the extended duration.

The Union's final offers on each of the three issues in dispute are as follows:

- I. Hardship:** Management shall not unreasonably deny an employee's hardship request. Examples of hardships include, (but are not limited to):
- Medical: Medical problems must be documented by a doctor's note or Shipyard Medical Clinic duty slip.
 - Legal problem that prohibits travel such as a criminal action, court order, court proceedings, or divorce in progress.
 - Family support situations such as sole custody of a family member with no support, family member with a major medical situation that requires the individual's presence, pregnancy where the birth is anticipated during the trip or a scheduled operation.
 - A death in the family

When a hardship is denied, written notification (email, memo, or other) to the IFPTE will occur within 5 workdays of a hardship denial, stating the conditions of the denial.

- II. Forced Trip Policy:** Management shall attempt to fill these requirements in four (4) week increments unless such factors such as qualifications, resources, or customer requirements dictate longer durations. In cases such as those, durations may be extended, and management will notify the IFPTE in writing (email, memo or other) of the general conditions that dictate the extended duration. Prior to each forced trip in the assignment, management shall re-solicit the trip for volunteers.
- III. Off-Yard Assignment Notification and Request for Volunteers:** Management shall attempt to fill long duration off-yard assignments where there are no volunteers for the entire duration at four (4) week increments unless factors such as qualifications, resources, or customer requirements dictate longer durations. In cases such as those, durations may be extended and management will notify the IFPTE in writing of the general conditions that dictate the extended duration.

CONCLUSION

This case revolves around three basic factors: (1) the lack of trust that the Union representative has for the Management team; (2) substantially changed conditions in the scope of work being done by the Code 206 Unit which have a profound affect on the case for change presented by the Union; and (3) the Union's insistence that the Employer notify it of hardship denials, forced trips, and off yard assignments in writing. The sole representative of the IFPTE at this hearing reiterated her lack of trust in group management on several different occasions during the hearing. According to the Union representative, bargaining unit employees feared filing grievances or informal complaints on the issues in dispute out of a fear of retaliation. Bargaining unit employees discretely left their work area to minimize calling attention to their visits to her Union steward's office.

Employees perceived and complained that management was unfair in distributing choice assignments to work in Pearl Harbor on "plum assignments." The Union's viewpoint is that management cannot be trusted to be fair or be relied upon to: (a) objectively consider and grant an employee's hardship request to be spared from a long-term assignment; (b) manage long-term trips in such a manner as to minimize the necessity of "forcing" employees in the event that there were no volunteers; and (c) effectively handle long term off-yard assignment notifications and requests for volunteers.

Despite the Union representative's sincere presentation, she presented no evidence to support the claim of unfairness or employee complaints. There are no grievances on the issues in dispute, no ADR process claims, nor claims of any kind. She presented no witnesses, no letters or depositions, or statements to substantiate her allegations of why the Management team for Code 206 employees should not be trusted. The Union did not dispute the Employer's assertion that no hardship requests have ever been denied nor cite any instances where the lack of volunteers created "a forced trip situation" that resulted in any protests.

Secondly, as noted above, working conditions for Code 206 employees have substantially changed since the Union initiated the request to bargain on a travel policy in 2008. At the time, employees were responsible for servicing, repairing, and field testing a mini stealth submersible for the Navy SEALs. Trips from their Portsmouth, New Hampshire Shipyard base to the Pearl Harbor base of the SEALs often lasted 6-7 weeks in order to minimize travel costs, to maximize resource effectiveness, and to have the technicians participate in field tests of the vessel at sea. However, the parties agree on the fact that since the prototype vessel burned in 2008, such trips have ended, the vessel has not been rebuilt, and the long-term assignments associated with the submersible project have not occurred. While Shipyard Management hopes to convince the SEALs to engage in a similar project in the future, no commitments have been made and no similar work is in the immediate offing.

The parties agree that the type of travel currently experienced by Code 206 employees is vastly different and that there are no disputes of any kind at present related to travel. Again, I am forced to ask the question, "Since there is no travel occurring of the type which led to this bargaining, none planned for the foreseeable future, and no disputes over travel including hardships, forced trips, or off-yard assignments, what is the basis for the Union's request?"

Third, a key issue in this case was the Union's insistence that Management provide written notification for denials of hardships, forced trip assignments, and off-yard assignments. The basis for the Union's insistence that notification from Management be in writing was its lack of trust in Management and the need to substantiate issues in future proceedings should that prove necessary. Management is willing to notify the Union but feels that it cannot guarantee that it will always be in writing and always be within a particular time frame. Management is willing to provide two copies of a denial of a hardship request to the employee so that, if that individual wishes to disclose the nature of the hardship to the Union to request its assistance, it will be free to do so. The Union maintains that it is not interested in the reason for the hardship request, only in being notified of the denial of same.

In the final analysis, in spite of the strength of the Management presentation of other collective bargaining agreements and MOUs between the Naval Shipyard and various unions that provided in general for notification but not written notification to the Union in cases of hardship denial, the Union pointed to MOUs re: Travel Policies for Code 250 and 244.1 which do specify that Management shall provide written notification to the IFPTE in those instances when hardship requests are denied. Management maintains that it was the negotiation of that language in those two specific agreements which resulted in a major change to the process of reviewing and approving all Shipyard contracts and MOUs.


DECISION

Having carefully considered the evidence and arguments presented by the parties, I conclude that the Employer's position provides the more compelling argument for resolving this dispute. Therefore, the parties shall adopt the following wording to resolve their impasse:

- I. **Hardship:** Management shall not unreasonably deny an employee's hardship request. An employee who disagrees with a denial of his or her

hardship request may request in writing management's reasons for the denial. Management shall respond in writing to those requests within 5 work days. Upon request by the affected employee, management shall provide two copies of its response should the employee wish to provide IFPTE with a copy. This process is not to delay or interfere with the subject travel.

- II. Forced Trip Policy:** Management shall attempt to fill these requirements at 4-week increments unless factors such as qualifications, resources, or customer requirements dictate longer durations. In cases such as those, durations may be extended, and management will notify an IFPTE official/steward via email, telephone, or face-to-face of the general conditions that dictate the extended duration. Prior to each forced trip in the assignment, management will re-solicit the trip for volunteers.
- III. Off-Yard Assignment Notification and Request for Volunteers:** Management shall attempt to fill long duration off-yard assignments where there is no volunteer(s) for the entire duration at 4-week increments unless such factors such as qualifications, resources, or customer requirements dictate longer durations. In cases such as these, durations may be extended and management will notify an IFPTE official/steward via email, telephone, or face-to-face of the general conditions that dictate the extended duration.



Edward F. Hartfield
Arbitrator

July 9, 2011
St. Clair Shores, Michigan