

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF VETERAN AFFAIRS  
VA EASTERN KANSAS HEALTHCARE  
SYSTEM  
DWIGHT D. EISENHOWER VA  
MEDICAL CENTER  
LEAVENWORTH, KANSAS

and

Case No. 12 FSIP 97

LOCAL 85, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

DEPARTMENT OF VETERAN AFFAIRS  
VA EASTERN KANSAS HEALTHCARE  
SYSTEM  
COLMERY-O'NEIL VA MEDICAL  
CENTER  
TOPEKA, KANSAS AND

and

Case No. 12 FSIP 98

LOCAL 1939, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

DECISION AND ORDER

The Department of Veterans Affairs (VA), VA Eastern Kansas Healthcare System, Dwight D. Eisenhower VA Medical Center, Leavenworth, Kansas and Colmery-O'Neil VA Medical Center, Topeka, Kansas (EKHCS or Employer) filed two identical requests for assistance with the Federal Service Impasses Panel (Panel) to consider negotiation impasses, under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), between it and Locals 85 and 1939, American Federation of Government Employees (AFGE), AFL-CIO (Union).

Following an investigation of the request, which arose out of negotiations over a dress code policy for EKHCS employees,

the Panel determined that the matter should be resolved through the issuance of an *Order to Show Cause* (OSC). Under this procedure, the Union was "directed to show cause why the Panel should not impose Health System Policy Memorandum, No. 00-11 (04/10) (HSPM No. 00-11 (04/10)), the dress code policy agreed upon by the Employer and the National Federation of Federal Employees (NFFE), Local 1765, and the National Association of Government Employees (NAGE), Local R14-8, on April 15, 2010. In this regard, the Union was specifically instructed to "submit its proposals on the issues at impasse" and include a "statement of position with supporting evidence and argument on the issues." The Employer was similarly directed to submit a "rebuttal statement of position" supported by "evidence and argument." The parties were advised further that after considering the entire record, the Panel would take whatever action it deems appropriate to resolve the impasse which may include the issuance of a *Decision and Order*. The Panel now has considered the entire record.

#### BACKGROUND

The mission of the EKHCS is to provide a wide range of inpatient and outpatient services to veterans in 39 counties in Kansas and Missouri with a focus on primary and psychiatric treatment and extended care. It accomplishes this mission primarily through its two campuses in Leavenworth and Topeka, which are supported by 10 Community Based Outpatient Clinics in eastern Kansas and northwest Missouri. Three unions represent four bargaining units at EKHCS.<sup>1/</sup> AFGE Local 85 represents approximately 406 non-professional bargaining unit employees (BUEs) in Leavenworth, and AFGE Local 1939 represents approximately 397 professional employees in Topeka. Both are part of a nationwide consolidated bargaining unit of over 100,000 employees in the VA. The parties are covered by a master collective-bargaining agreement (MCBA) which is due to expire in March 2014.

In 2008, the Employer notified the four locals that it wanted to implement a dress code policy. Joint bargaining commenced over what was then HSPM No. 00-11 (06/08). AFGE subsequently withdrew from the negotiations in accordance with its rights under Article 44 of the MCBA. EKHCS continued

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<sup>1/</sup> NFFE Local 1765 represents some 246 professional employees at the Leavenworth Campus and NAGE Local R14-8 represents about 450 non-professional employees at the Topeka Campus.

bargaining with NFFE and NAGE and the parties reached an impasse concerning two sections of the proposed dress code policy. The Employer then filed two identical requests for assistance, Case Nos. 09 FSIP 122 and 09 FSIP 123, which were consolidated by the Panel and assigned to Member Martin H. Malin to resolve through a mediation-arbitration proceeding in Topeka, Kansas. With his assistance, the parties voluntarily resolved their dispute and, on April 15, 2010, incorporated their agreements into what is now known as HSPM No. 00-11 (04/10). Section 2.d.11. of the policy states that "bib overalls are not allowed," and also prohibits "denim jeans" for all but the following: Recreational Therapists; Clerical employees in the Centralized Scheduling Unit; Registered Nurses, Licensed Practical Nurses and Nursing Assistants assigned to Behavioral Health; Maintenance workers; Staff Pharmacists; and other professional employees assigned to the Domiciliary and Addiction Treatment Program. These employees are allowed to wear "colored jeans at all times and blue jeans on Fridays, Saturdays and Sundays and during second and third shifts on all days." Jeans are to be to "be in good repair, not tight or form-fitting, not baggy, not frayed, faded or streaked." Soon after it reached agreement with NAGE and NFFE, the Employer proposed that AFGE Locals 85 and 1939 adopt HSPM No. 00-11 (04/10) as well. Local bargaining commenced and the instant requests for assistance were filed shortly thereafter.

#### ISSUES AT IMPASSE

In essence, the parties disagree over whether: (1) Pharmacy Technicians, Prosthetics employees, Medical Support Assistants, and Medical Technicians and Medical Technologists should be added to the list of occupations permitted to wear jeans with the restrictions set forth in Section 2.d.11. of HSPM No. 00-11 (04/10); (2) Mailroom and Reproduction employees should be allowed to wear blue jeans without restriction - that is, on any day of the week and on any shift; and (3) Auto Mechanics should be allowed to wear bib overalls.<sup>2/</sup>

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<sup>2/</sup> The issues in dispute were clarified during a conference call between the Panel's Staff and the Union's representatives after the Panel received the Union's response to the OSC. In this regard, during the investigation of the requests for assistance, the Union argued that Telephone Operators and Program Support Assistants should also be allowed to wear jeans in conformance with Section 2.d.11.'s restrictions. The investigation also revealed that during mediation the

POSITIONS OF THE PARTIES

1. The Union's Position

At the outset, the Union contends that the Dress Code Guidelines should not be implemented at all since it makes no sense to force employees "to purchase new attire for a system that is not broken." Moreover, if the Employer really "felt so strongly about it," EKHCS would have put its agreement with NFFE and NAGE into effect when it was reached 2 years ago. If, however, the dress code must be imposed, the Union proposes that, at the very least, Pharmacy Technicians, Prosthetics employees, Medical Support Assistants, and Medical Technicians and Medical Technologists be added to the list of positions in HSPM No. 00-11 (04/10), Section 2.d.11., that are allowed to wear colored jeans at all times, and blue jeans on Fridays through Sundays on the first shift, and at all times on all days during the second and third shifts. The Union also proposes that Mailroom and Reproduction employees be allowed to continue to wear blue jeans whenever they work "as they have always done" because they "deliver mail once in the morning and once in the afternoon," are "constantly lift[ing] heavy boxes," and "pick up packages that are wet, muddy and [leave] black marker on their hands at all times that gets on their clothes." In short, Mailroom and Reproduction employees "perform a lot of physical work and for the majority of their day, they are not in the public view," so their work is not conducive to business casual dress. The Union's final proposal is that Auto Mechanics be permitted to continue their longstanding past practice of

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Employer offered to provide uniforms/scrubs for Pharmacy Technicians, Prosthetics employees, Medical Support Assistants, Medical Technicians and Medical Technologists. According to the Employer, it withdrew that offer when AFGE refused to accept it as part of a complete settlement of the parties' dispute. During the conference call, the Union's representatives stated that: (1) the issue of whether Telephone Operators should be allowed to wear jeans is not before the Panel; (2) Program Support Assistants should be dropped from the list of those permitted to wear jeans because they have been reclassified as Medical Support Assistants; and (3) no agreement was reached at mediation concerning the Employer's offer to provide uniforms/scrubs to Pharmacy Technicians, Prosthetics employees, Medical Support Assistants, Medical Technicians and Medical Technologists.

wearing bib overalls. In its view, bib overalls are essential because they "allow Auto Mechanics to carry tools that are housed in multiple pockets and allow them to perform their duties more effectively." In addition, "this attire is customary for the auto mechanic industry."

## 2. The Employer's Position

The Panel should order the adoption of HSPM No. 00-11 (04/10) to resolve the impasse, including Section 2.d.11., which prohibits the wearing of bib overalls and only permits the wearing of denim jeans at EKHCS by Recreational Therapists; Clerical employees in the Centralized Scheduling Unit; RNs, LPNs and NAs assigned to Behavioral Health; Maintenance Workers; Staff Pharmacists and other professional employees assigned to the Domiciliary and Addiction Treatment Programs. The purpose of the dress code policy, as described in Section 1, is "to establish broad guidelines in respect to appropriate on-duty attire and hygiene for [EKHCS] employees and others who serve in an official capacity and represent the health care system." By limiting those allowed to wear jeans to off-hours and to categories of employees who are generally not in the public eye, Section 2.d.11. supports that policy. Moreover, "adopting the same guidelines for all employees avoids confusion and allows for consistent application and enforcement." The Employer stresses that the dress code guidelines were "negotiated with input from local unions with professional and non-professional members, thus, a broad range of work environments was considered in arriving at the final policy." According to the Employer, EKHCS, NFFE and NAGE worked hard to create a reasonable balance between the Employer's interest in having employees "clean and odor-free" and "look appropriate within their service line" and the unions' interest in loosening that objective for employees whose jobs do not "represent the health care system" (e.g., Maintenance Workers) or those who, though essential to EKHS's health-care delivery, work primarily out of patient and other public sight (e.g., Recreational Therapists and Staff Pharmacists).

In response to the Union's proposal that Auto Mechanics should be permitted to continue to wear bib overalls, the Employer points out that, contrary to the Union's claim, there are no Auto Mechanics at EKHCS - only Maintenance Mechanics - and that these Mechanics have already been provided uniforms. Although a few of them continue to wear jeans with their uniform shirts, all but one now wear the uniform top. During mediation, the Employer offered to permit the one Maintenance Mechanic the

Union refers to as the "Auto Mechanic" to continue wearing bib overalls until his retirement, but the offer was rejected. In conclusion, "given the wide variety of fabric types and price ranges consumers have to choose from in today's marketplace, there should be enough options available to allow employees to purchase clothing that is both affordable and in compliance with the dress code."

### CONCLUSIONS

Having carefully considered the Union's response to the OSC, and the Employer's rebuttal, we conclude that the Union has failed to show cause why HSPM No. 00-11 (04/10), including Section 2.d.11., should be not imposed to settle this matter. Given the history of the Employer's efforts to implement a dress code policy within the EKHCS, the Union's conflicting contentions that no dress code should be implemented, and that the Employer should have implemented it 2 years ago when it reached agreement with NFFE and NAGE, appear to be disingenuous. More importantly, the Union has not provided any evidence or argument to support its proposal to add Pharmacy Technicians, Prosthetics employees, Medical Support Assistants, and Medical Technicians and Medical Technologists to the list of positions permitted to wear jeans on the grounds that these positions are similar to the ones already included in Section 2.d.11 of HSPM No. 00-11 (04/10). In this regard, it is clear that in reaching their agreement the Employer and its other two unions determined the positions that would be permitted to wear jeans by identifying those who work primarily out of patient and other public sight. It is also clear that the agreement addressed the interests of the same types of professional and non-professional employees represented by AFGE Locals 85 and 1939. In addition, with respect to its proposal that Mailroom and Reproduction employees be allowed to continue to wear blue jeans whenever they work, the Union asks that we overlook the fact that these employees are regularly in areas frequented by the public. As the Union has not provided a sufficient basis for disturbing the outcome of the agreement reached between the Employer and its other two unions, we shall order the parties to adopt HSPM No. 00-11 (04/10) to resolve the impasse.

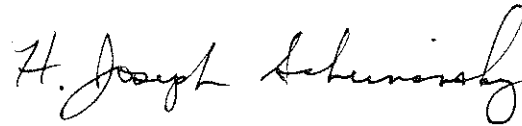
### ORDER

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 impasse during the course of proceedings instituted pursuant to the

Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt HSPM No. 00-11 (04/10) in its entirety.

By direction of the Panel.



H. Joseph Schimansky  
Executive Director

September 4, 2012  
Washington, D.C.