

United States of America
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF DEFENSE
DEPARTMENT OF DEFENSE
DEPENDENTS SCHOOLS
MEDITERRANEAN REGION

and

OVERSEAS FEDERATION OF TEACHERS, AFT,
AFL-CIO

Case No. 92 FSIP 167

DECISION AND ORDER

The Overseas Federation of Teachers, AFT, 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, 5 U.S.C. § 7119, between it and the Department of Defense, Department of Defense Dependents Schools (DODDS), Mediterranean Region (Employer).

After investigation of the request for assistance, the Panel determined that the impasse concerning the work schedule and compensation for "The Study of Teaching" (TST)^{1/} trainers should be resolved through written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the impasse. Written submissions were made pursuant to this procedure, and the Panel now has considered the entire record.

^{1/} TST is a staff development program staffed by Employer-trained and certified volunteer classroom teachers. While employees who volunteer to become TST trainers can opt out at any time, there is an expectation of at least a 1-year commitment following completion of the training. (Memorandum for District Superintendents, Principals, "Announcement-Teacher Trainer," dated October 10, 1990.) That Memorandum also indicated that the position would require weekend travel and longer workdays and workweeks than those of teachers for the same salary.

BACKGROUND

The Employer provides quality education to the dependent children of Department of Defense civilian and military employees who are stationed in Spain, the Azores (Portugal), Italy, Greece, Turkey, and Bahrain. The Union represents a bargaining unit of approximately 800 employees who work in such professional positions as teacher, psychologist, nurse, and librarian, among others. Their pay is set in accordance with the Department of Defense Overseas Teachers Pay and Personnel Practices Act, 20 U.S.C. § 903. Under its terms, the parties' collective-bargaining agreement has been automatically renewed on an annual basis since it expired in February 1987.

The dispute arose during impact-and-implementation bargaining over the Employer's proposed 8-hour work schedule for TST trainers to coincide with that of the administrators in the District Superintendents' Offices (DSOs) to which they are assigned. The record indicates that the Employer intended to implement its proposed schedule at the beginning of the current school year; whether it did so is unclear. Trainers had been working the same hours they did as classroom teachers; their hours varied depending on the hours of their home schools. Five trainers will be affected by the outcome to this dispute; two each are assigned to the DSOs in Incirlik, Turkey, and Vicenza, Italy, and one to Rota, Spain.

ISSUES AT IMPASSE

The parties disagree over (1) whether TST trainers' workdays should be lengthened and (2) whether and how they should be compensated for the increased hours.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer proposes the following:

1. TST trainers will work the 8-hour shift of the District Superintendents' Office[s] to which they are detailed.
2. The portion of the 8-hour day which is equal to the number of hours of the duty day of the school to which they are permanently assigned, will be compensated under basic pay.
3. Work in excess of 8 hours, while on detail to the TST position, will be compensated using the 200 hour-plus band of the Extra Duty Compensation Schedule. Extra duty compensation will be administered in accordance with Department of Defense Regulation 5550.9, Department of Defense Dependent Schools Compensation for Extra Duty Assignments.

The Employer has the right to determine the length of TST trainers' workdays. In a memorandum dated May 1, 1992, it notified the Union that it considered the matter substantively nonnegotiable. The Union's failure to appeal that written allegation of nonnegotiability within the 15-day statutory time limit settled the matter.^{2/} Moreover, the TST trainer position is a typical white collar position where incumbents normally work an 8-hour day, 40-hour week schedule primarily in an administrative office setting.

With regard to the Union's alternative proposal, which would, among other things, compensate trainers at the rate of 150 percent of their base pay for work performed outside of their duty day at their home school, it notes that while the issue of teachers' overtime pay for such work is a negotiable matter, the Panel rejected it on the merits in an earlier case.^{3/} Also, for some 30-plus years, compensation for such work has been made through the Extra Duty Compensation Schedule "set as part of an annual survey conducted by [the] Department of Labor." Finally, trainers' hourly rates should be based on their 8-hour workday, not the 6-hour day proposed by the Union.

2. The Union's Position

The Union proposes that TST trainers (a) work the hours of the schools from which they were detailed and (b) receive extra-duty pay at the maximum rate established in DODDS Regulation 5550.9 (the Extra Duty Compensation Schedule) for work beyond those hours. It also proffers an alternative proposal to be considered, should the Panel determine that the Employer has the right to establish trainers' duty hours. That provides for: (a) trainers to be paid for work performed outside of the hours of their duty day at the school from which they were detailed at a rate of 150 percent of their base pay; (b) Saturday and Sunday, and Federal holiday work, to be compensated at 150 and 200 percent of base pay, respectively; and (c) their hourly rate of pay to be determined by dividing their daily rates by the length of their former duty day.

Contrary to the Employer's assertion, its proposals are substantially the same as those which the Federal Labor Relations Authority (Authority) found negotiable in U.S. Department of Defense Dependents Schools, Dependents Schools, Mediterranean

2/ 5 U.S.C. § 7117(c)(2).

3/ Department of Defense, Department of Defense Dependents Schools, Alexandria, Virginia and Overseas Education Association, NEA, Case Nos. 92 FSIP 17 and 103 (December 18, 1992), Panel Release No. 339.

Region, Madrid, Spain and Overseas Federation of Teachers, AFL-CIO, 38 FLRA 755 (1990).^{4/} In addition, in Overseas Education Association, Inc. and Department of Defense Dependents Schools, 29 FLRA 734, 925-27 (1987) (Proposal 8), the Authority found negotiable a portion of a proposal which authorized overtime pay for teachers for work performed after their normal duty day.^{5/}

Its primary proposal is consistent with DODDS Headquarters' determination that trainers continue to work the same hours as other members of the bargaining unit.^{6/} More important, it simply provides for the Employer to follow the same practice which it has admitted is followed in DODDS' Germany and Atlantic Regions. This proposal is "fair, reasonable, and equitable." The Employer's proposal, on the other hand, would require trainers in the Mediterranean Region to work an hour or more longer than trainers in the other two regions before becoming eligible for overtime pay.

^{4/} The two proposals involved in that case are as follows:

1. Teachers who as part of their regularly assigned work are required to remain beyond their duty hours will be compensated at their daily rate comparable to the number of hours worked.
2. Teachers who as part of their regularly assigned work are required to remain beyond their duty hours will be compensated at their daily rate times 1 1/2 (one and one-half) comparable to the number of hours worked.

^{5/} The sentence found to be negotiable provided that: "If said assignment results in the loss of scheduled preparation time or otherwise causes additional work beyond the normal duty day, then the unit employee shall be compensated at a rate consistent with Article 35, Section 9, or otherwise provided with compensatory time." Sections 9 and 10, which fixed the overtime pay rate, also were found to be negotiable. Overseas Education Association, 29 FLRA at 837-39.

^{6/} In support of this position, the Union submitted copies of two letters from DODDS' Chief of Management-Employee Relations, dated April 28 and June 22, 1992, respectively. These letters, however, do not state that trainers should work the same hours as other members of the unit but rather, that the Employer has advised DODDS Headquarters that they are working such hours.

Finally, the current trainers, all of whom were trained at a substantial cost to the Employer (\$10,000 per employee), have indicated to the Union that, should the Employer's proposal be adopted, they will leave the TST program. Their departure would hinder the program in the Mediterranean Region.

CONCLUSIONS

Having considered the proposed provisions and the evidence and arguments presented in support thereof, we conclude that the parties should adopt the Employer's proposal to resolve the impasse. In our view, while the disposition of this case depends upon the merits of the Union's proposals, we note that we are in agreement with the Employer that the Union's primary proposal would limit the length of trainers' workdays, and, therefore, appears to interfere with its right to assign work under § 7106(a)(2)(B) of the Statute.^{7/} Also, contrary to the Union's assertion, its alternative proposal is not substantially the same as that which the Authority found negotiable in DODDS, Madrid, supra. While the proposal in DODDS, Madrid addresses the compensation for work performed by employees after their duty day, the Union's alternative proposal addresses pay for additional hours employees would be required to work as a result of the lengthening of their duty day. It in effect addresses basic pay not overtime pay. In this regard, in Overseas Education Association, Inc. and Department of Defense Dependents Schools, 29 FLRA 628 (1987) (Proposal 7k), the Authority found a substantially similar proposal to be contrary to the Department of Defense Overseas Teachers Pay and Personnel Practices Act, 20 U.S.C. § 903, and, therefore, outside the duty to bargain.^{8/}

As to the merits of the proposals, even though we have some concern that adopting the Employer's proposal would apparently

^{7/} The Employer's argument that the length of the workday issue is a settled matter because the Union did not appeal its apparently unsolicited written allegation of nonnegotiability within the 15-day statutory time limit is contrary to law, however. In this regard, only a written allegation of nonnegotiability made in response to a written request for such allegation triggers the 15-day time limit for filing a negotiability appeal. American Federation of Government Employees, Local 1533 and Naval Supply Center, Oakland, 8 FLRA 33 (1982); 5 C.F.R. § 2424.3.

^{8/} That proposal provided that: "For each minute added to an impacted unit employee's workday, the unit employee shall receive compensation at a rate equal to his/her daily rate of pay."

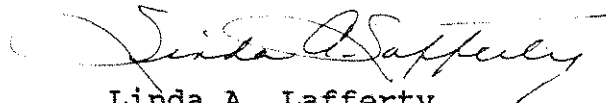
result in disparate treatment of similarly-situated employees in the different DODDS regions, we believe that since the work of trainers is more typical of that performed by the other employees at the DSOs than of teachers, it is reasonable and fair that they work the same schedule. Moreover, since their participation in the program is voluntary, those unhappy with their new work schedule may leave. At this point, the prospect of a mass exodus of trainers from the program is speculative. The parties can address that if it becomes a problem. Also, we note that the TST trainer position announcement placed teachers on notice that, should they volunteer for the position, they would be required to work more hours than they did as teachers for the same pay.^{2/} Finally, with regard to the rate of compensation for work performed outside the duty day, we conclude that the Union has failed to demonstrate the need to change the status quo, and that it is reasonable to continue the 30-plus year compensation method proposed by the Employer.

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 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 the Employer's proposal.

By direction of the Panel.



Linda A. Lafferty
Executive Director

February 25, 1993
Washington, D.C.

^{2/} See supra note 1.