

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of )

DEPARTMENT OF THE NAVY )  
NAVY PUBLIC WORKS CENTER )  
NORFOLK, VIRGINIA )

and )

TIDEWATER VIRGINIA FEDERAL EMPLOYEES )  
METAL TRADES COUNCIL, AFL-CIO )

Case No. 92 FSIP 72

DECISION AND ORDER

Following a Notice of Hearing in the above-referenced case, Staff Associate Gladys M. Hernandez conducted a factfinding hearing in Norfolk, Virginia, on September 28 and 29, 1992, and in Washington, D.C., on October 6, 1992, on the issue of environmental differential pay (EDP) for employees exposed to asbestos in the main power plant (P-1) at the Norfolk Naval Base. At the hearing, a stenographic record was made, testimony and arguments were presented, and documentary evidence was submitted. Following the hearing, the parties submitted additional evidence and filed post-hearing briefs. Thereafter, the Factfinder's Report, without recommendations for settlement, was submitted to the Panel which has now considered the entire record.

ISSUE AT IMPASSE

The proposals and positions of the parties regarding the above-stated issue are set forth in the attached Factfinder's Report.

CONCLUSIONS

Turning to the Union's belated jurisdictional argument that the disputed matter concerns a question of contract interpretation and application and, therefore, is inappropriate for resolution by the Panel, we first note that it is undisputed that Article 26, § 4, of the parties' collective-bargaining agreement covers the payment of EDP to employees required to work in P-1 at any given time.<sup>1/</sup> There is nothing in the plain wording of that contract provision, however, which suggests to us that negotiations rather than grievance arbitration over whether the Employer has satisfied

<sup>1/</sup> See Factfinder's Report at 6-7, 8, and 10-11.

the criterion for termination of P-1 EDP, set forth therein, or P-1 EDP generally, are mandated.<sup>2/</sup> Thus, whether that contract provision alone, or in conjunction with § 3 of Article 26, permits negotiations over P-1 EDP, as the Employer argues, would require the Panel to interpret these contract provisions. The interpretation of existing contract provisions, however, is a matter which the Panel has consistently determined is appropriately deferred to an arbitrator. The Employer also acknowledges that it did not request to reopen those contract provisions and negotiate over P-1 EDP under Article 34, § 3, the contractual mid-term reopener provision.<sup>3/</sup> Whether the parties' exchanges of proposals and discussions nonetheless rise to the level of binding negotiations for amending Article 26, § 4, under Article 34, § 3, as the Employer contends, also is a matter appropriately resolved in another forum. Since in this case it is unclear whether there is an obligation to bargain on the Union's part, under Authority precedent, it is free to withdraw from the bargaining table at any time short of an agreement.<sup>4/</sup> It has chosen to do so. Thus, while we regret to relinquish jurisdiction over the parties' proposals at this late stage in the proceedings, after the parties and the Panel spent considerable resources convening their representatives and witnesses at a factfinding hearing in Norfolk and Washington, D.C., to resolve the issue, the record before us permits no other conclusion.

#### 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 the proceedings instituted under the Panel's regulations,

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<sup>2/</sup> See Factfinder's Report at 7, n. 8.

<sup>3/</sup> See Factfinder's Report at 8, 11.

<sup>4/</sup> See, for example, Federal Deposit Insurance Corporation, Headquarters and National Treasury Employees Union, 18 FLRA 768, 772 (1985).

5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby relinquishes jurisdiction over the dispute.

By direction of the Panel.

A handwritten signature in cursive script, appearing to read "Linda A. Lafferty".

Linda A. Lafferty  
Executive Director

December 15, 1992  
Washington, D.C.

Attachment