

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

DEPARTMENT OF THE ARMY)
 HEADQUARTERS, U.S. ARMY ARMAMENT,)
 MUNITIONS, AND CHEMICAL COMMAND)
 ROCK ISLAND, ILLINOIS)

and)

Case No. 92 FSIP 204

LOCAL 15, NATIONAL FEDERATION OF)
 FEDERAL EMPLOYEES)

DECISION AND ORDER

The Department of the Army, Headquarters, U.S. Army Armament, Munitions, and Chemical Command, Rock Island, Illinois (Employer), and Local 15, National Federation of Federal Employees (Union) filed a joint request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under section 7119 of the Federal Service Labor-Management Relations Statute (Statute).

The Panel determined that the impasse should be resolved on the basis of a single written submission from each party, 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 has now considered the entire record.

BACKGROUND

The Employer's mission is to provide support to the Army Materiel Command. The bargaining unit consists of approximately 3,200 nonprofessional General Schedule employees who work in a variety of administrative and technical occupations. The parties are covered by a collective-bargaining agreement that is due to expire in October 1992. They have reached impasse following negotiations over the impact and implementation of the Employer's plan to curtail operations (with the possible exception of essential personnel) on the Friday following Thanksgiving.

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ISSUE AT IMPASSE

The sole issue in dispute is the leave status of employees during the period of holiday shutdown.

1. The Union's Position

The Union proposes the following:

All affected employees will be placed on administrative leave, without charge to annual leave, for the period of the proposed shutdown.

Placing employees on administrative leave is more desirable, as it would allow them to retain control over use of their annual leave; this is consistent with a widely-accepted principle of labor-management relations which allows vacation time to be scheduled in accordance with employee preference, absent a compelling reason to the contrary. Since annual leave is an earned benefit, directing employees as to when to use it is "akin to telling employees where, when, and how to spend their paychecks." Moreover, forced annual leave could be disruptive to some employees' vacation plans and may reduce, for others, the lump sum which is paid at retirement for unused annual leave. The Employer's savings would be identical regardless of whether employees are placed on annual leave or administrative leave, and, therefore, adoption of this proposal should not be an impediment to the Employer's planned shutdown. In addition, use of administrative leave would not result in any increased costs to the Employer. Finally, adoption of the proposal is consistent with those sections of the Federal Personnel Manual (FPM) which it believes require employees to be excused without loss of pay or charge to leave during short periods of shutdown.^{1/}

1/ FPM Chapter 610, Subchapter 3 (1989) applies to situations where agency operations must be curtailed for the following reasons: (1) extreme weather conditions; (2) interruption of transportation or building services; or (3) better utilization of funds or resources. FPM Supplement 990-2, Book 630, Subchapter S11, Section S11-6 (1968) discusses "the effect of these dismissals and the employees involved." Paragraph b. of that section provides:

When installations or activities of an agency are closed or employees excused under the provisions of the joint resolution of June 29, 1938, as amended, as implemented by the Commission's regulations (see book 610), per diem, per hour, or piece-work employees are excused without loss of pay or charge to leave.

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2. The Employer's Position

The Employer's proposal is as follows:

The Employer may cease operations on the day after the Thanksgiving Holiday, 27 November 1992. All personnel, except those designated by the Employer to be 'emergency or mission essential' will be required to use 8 hours of annual leave for the day. Upon written request to the supervisor, (a) an employee with an insufficient annual leave balance may have annual leave advanced to cover the 8-hour period; (b) an employee with accumulated compensatory time may use such accumulated compensatory time to cover all or a portion of the 8-hour period; [or] (c) an employee may use [Leave Without Pay] to cover all or a portion of the 8-hour period. If the Employer designates employees to work as 'emergency or mission essential,' qualified volunteers (title, series, and grade as determined by the Employer), within the cost

1/ (...continued)

Paragraph c. of that section describes the effect of these dismissals on per annum employees. It provides, in relevant part, as follows:

Per annum employees are governed by various Comptroller General's decisions. It has generally been held that when field establishments are closed for administrative reasons, employees may be placed on annual leave . . . * * * '[I]f the head of a department, under proper authority, should close the department or any unit thereof on a day or days within a regular tour of duty of employees, and should not require employees to take annual leave, the nonworkdays established by such an administrative order would not be charged to leave. On the other hand, if the head of the department exercises statutory authority to require all or any part of the employees under his jurisdiction to take annual leave on a particular day or days which but for such action would be within the regular tour of duty of employees . . . such day or days would be the same as days of duty . . . and would not be regarded as nonworkdays established by . . . administrative order' (Quoting from 19 Comp. Gen. 955, 957 (1940)).

The Union maintains that these portions of the FPM establish that "when an activity is closed for a short period, the employees shall not suffer any loss of pay or be charged with leave."

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center of the organization in which the work is to be performed, will be solicited. If there are more qualified volunteers than needed, selection will be in seniority order. If there are insufficient volunteers, selection will be in inverse order of seniority.

Requiring employees to use annual leave during the proposed holiday shutdown will allow the Employer to continue with its plan. In this regard, requiring administrative leave would result in cancellation of the planned shutdown, thereby resulting in the facility operating at diminished capacity on that day. Under the Employer's proposal, each employee would have 1 less day of annual leave, which also should result in increased productivity for the remainder of the year. Moreover, the shutdown is likely to result in cost savings because of the reduced use of utilities during the 4-day holiday period. The inconvenience to employees should be minimal since: (1) many workers request annual leave on the day following Thanksgiving anyway; and (2) the number of hours involved represents only a small portion of most employees' annual leave. Overall, this proposal provides for a more efficient use of resources and appears to be consistent with prior Panel decisions addressing the subject.^{2/}

The Union's proposal, on the other hand, amounts to providing 3,800 employees an additional paid holiday at a total cost of approximately \$800,000.^{3/} Since nearly 50 percent of the

2/ The Employer cites Department of the Navy, Mare Island Naval Shipyard, Vallejo, California and Local 5, Planners, Estimators, Progressmen, and Schedulers; Federal Employees Metal Trades Council; Local 25, International Federation of Professional and Technical Engineers, AFL-CIO; and Local 11, International Federation of Professional and Technical Engineers, AFL-CIO, Case Nos. 92 FSIP 147, 150, 151, and 159 (June 25, 1992), Panel Release No. 332. In those cases, the Panel rejected the Unions' proposal which would have required the Employer to compensate employees with 1 day of administrative leave for each day of annual leave (or other paid leave) that they were forced to take during a shutdown period. The Employer also relies on Panel decisions in Department of the Army, Rock Island Arsenal, Rock Island, Illinois and Local 15, National Federation of Federal Employees, Case No. 90 FSIP 83 (July 3, 1990), Panel Release No. 296; and Department of the Army, Dugway Proving Ground, Dugway, Utah and Locals R14-9 and R14-62, National Association of Government Employees, Case No. 88 FSIP 220 (December 20, 1988), Panel Release No. 276.

3/ While the Employer has apparently based its cost estimate of the Union's proposal on a workforce of 3,800 employees, the
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workforce takes annual leave on the Friday after Thanksgiving anyway, placing employees on administrative leave for that day would result in a windfall for those who have selected it as a vacation day. Generally speaking, the Union's proposal is fiscally unsound and would result in significant costs to the Employer with no offsetting benefits.

CONCLUSIONS

Having examined the evidence and arguments in this case, we conclude that the Employer's proposal provides a better overall resolution to the impasse, and shall order its adoption. While forced annual leave may result in inconvenience to some employees, on balance, the cost savings and productivity increases which are likely to flow from the Employer's plan outweigh the loss of employee control in the scheduling of annual leave.^{4/} Since the

3/ (...continued)

record reveals that only 3,200 of these employees are members of the bargaining unit.

4/ In addition, the Employer's proposal appears to be consistent with relevant portions of the Federal Personnel Manual as well as Comptroller General decisions which address this matter.

The Federal Personnel Manual, Chapter 610, Subchapter 3, Paragraph 3-6c provides as follows:

Group dismissal may be necessary to better utilize funds or resources. In such situations, agencies may detail employees to other duties; require employees to schedule annual leave for use during the non-duty period; or furlough employees if lack of work or funds is involved. Agencies must provide employees with reasonable advance notice of a planned curtailment and of any requirement to save annual leave for use during the prescribed period. Agencies may deny requests for annual leave that would cause an employee's leave balance to be less than that required to cover the curtailment period. Agencies may allow employees to use LWOP, if requested, to cover the period.
(Emphasis added)

Moreover, the Comptroller General has consistently held that an employee may be placed in an annual leave status without his consent in all situations where the administrative office considers it desirable from an official standpoint that the employee not be continued in an active duty status. See 40 Comp. Gen. 312 (1960); 32 Comp. Gen. 204 (1952); 28 Comp. Gen.

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number of hours involved represents only a small portion of most employees' accrued annual leave, vacation plans are not likely to be disrupted by this decision. Moreover, the Employer's plan allows employees to select from among several leave options (annual leave, compensatory time, or leave without pay); this should allow most workers to retain some control over their accrued annual leave while providing a benefit to those who would have worked only because they had an insufficient amount of annual leave. With respect to the Union's proposal, we agree that placing the entire workforce on administrative leave is the same as providing employees with an additional paid holiday; this would be a windfall for those employees who would have requested annual leave. Furthermore, the cost of such a proposal is prohibitive, especially in the current economic climate.

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 proceeding instituted under 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

October 1, 1992
Washington, D.C.

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526 (1949); and 19 Comp. Gen. 955 (1940). Likewise, that portion of the Employer's proposal allowing employees to be advanced annual leave to cover the period of holiday shutdown is consistent with the ruling in 31 Comp. Gen. 581 (1952).