

United States of America  
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of )

DEPARTMENT OF HEALTH AND HUMAN SERVICES )  
SOCIAL SECURITY ADMINISTRATION )  
CHICAGO NORTH DISTRICT OFFICE )  
CHICAGO, ILLINOIS )

and )

LOCAL 1395, AMERICAN FEDERATION )  
OF GOVERNMENT EMPLOYEES, AFL-CIO )

Case No. 92 FSIP 37

DECISION AND ORDER

Local 1395, American Federation of Government Employees, 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 (Statute), 5 U.S.C. § 7119, between it and the Department of Health and Human Services, Social Security Administration, Chicago North District Office, Chicago, Illinois (SSA or Employer).

After investigation of the request for assistance, the Panel determined that the impasse, concerning accommodations for employees who were precluded from volunteering for a liaison position, should be resolved on the basis of written submissions from the parties, with the Panel to be limited to selecting either of the parties' final proposals, to the extent that the proposals were otherwise lawful. Written submissions were made pursuant to this procedure and the Panel has considered the entire record.

BACKGROUND

The Employer provides the public with information concerning retirement, disability, Social Security, and Supplemental Security Income (SSI) benefits and processes those claims. The Union represents approximately 56 bargaining-unit employees in the Chicago North District Office who are part of a nationwide consolidated unit consisting of approximately 48,000. Employees in the office hold such positions as claims representative, service representative, field representative, and claims development clerk. The parties are covered by a master collective-bargaining agreement (CBA) which is scheduled to expire in January 1993.

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In September 1990, SSA awarded a grant to a local organization called Travelers and Immigrants Aid (TIA) to identify homeless individuals who would qualify for SSI benefits, and obtain SSI applications from them. These applications would then be forwarded to SSA for processing. As part of the Employer's coordination of the project, it assigned a claims representative with experience in SSI claims to be the liaison between the District Office and TIA. At the completion of the project the employee received a cash award of \$400 based on her performance as liaison. The dispute arose following an informal settlement of an unfair labor practice (ULP) charge where the parties agreed to negotiate over the impact of the Employer's decision to select the particular claims representative for the temporary assignment.

### ISSUE

The parties basically are at impasse over whether qualified employees who were not afforded an opportunity to volunteer for the liaison position should receive treatment equal to the individual who was selected.

#### 1. The Union's Position

The Union proposes that:

(1) Any claims representative who states that she or he would have volunteered for the liaison position in the outreach program and who meets or exceeds the summary performance appraisal rating in effect at the time of the selection of the employee chosen to fill the position will be entitled to equitable treatment to that of the selected employee, and; (2) Employees who were excluded from consideration for the liaison position in the outreach program will, for purposes of promotions, receive the same credit for having participated in the program, including a deemed award, as may be received by the individual who was selected for the position.

This proposal is a fully negotiable "make-whole remedy" which does not dictate "to the agency when to recommend or approve an award." Rather, it asks redress for a wrong, i.e., the Employer's unilateral decision to preclude other employees from volunteering for the liaison position. Had the Employer fulfilled its bargaining obligations, the Union would have been given a chance to participate in devising an "equitable selection method" for the liaison position. Furthermore, all claims representatives took part in the program and were a "vital cog" in making it a success. Singling out one employee award-wise has decreased morale. In addition, adoption of its proposal would lessen the chance of the Employer's making a change in working conditions without bargaining in the future.

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## 2. The Employer's Position

The Employer proposes "to give appropriate recognition to all employees who were eligible for the liaison position but were not given the opportunity to volunteer."

Preliminarily, the Employer asserts that the Union's proposal is nonnegotiable because it dictates when it can recommend or approve performance awards, in conflict with Government-wide regulations.<sup>1/</sup> In this regard, its adoption would mean that all qualified claims representatives would receive awards without the approval of a higher official, as required by the regulations.

With regard to the merits of Union's proposal, the cash award granted to the employee was based on her outstanding performance in completion of her liaison duties, and not simply for being the liaison. It is not known what the projected performance of others would have been to warrant an award, or if those who would come forward under the Union's proposal actually would have volunteered at the time. Also, the individual in the liaison position performed many duties that the other claims representatives were not required to perform. It would be unfair to give all qualified claims representatives the same credit and award where outstanding liaison-type services were never rendered by them.

### CONCLUSIONS

With respect to the arguments raised by the parties concerning the negotiability of the Union's proposal, we find it unnecessary to address their validity because we are persuaded that the Employer's final offer should be adopted. As we interpret it, at the very least the Union's proposed make-whole remedy would require the payment of \$400 to every employee meeting certain specified criteria, merely on the basis of a statement that he or she would have volunteered for the liaison position had the opportunity been presented at the time the position was filled. In our view, this would amount to a financial windfall for employees which is disproportionate to the adverse affects caused them by the Employer's previous actions. Moreover, the Union's reference to "equitable treatment" is vague, and could lead to future disagreements. Although we are cognizant that the Employer's proposal to give qualified employees "appropriate recognition" is also vague, given the final-offer selection procedure, it is the

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<sup>1/</sup> In support of its contention, it cites Government-wide regulations governing incentive awards, specifically, 5 C.F.R. § 451.104 (e)(3) and (j), which state essentially that awards shall be reviewed and approved by an official of the agency who is at a higher level than the official who made the initial decision.

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more reasonable approach. For these reasons, we shall order its adoption.

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 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

August 26, 1992  
Washington, D.C.