

United States of America
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

U.S. NUCLEAR REGULATORY COMMISSION)
REGION III)
CHICAGO, ILLINOIS)

and)

NATIONAL TREASURY EMPLOYEES UNION)

Case No. 92 FSIP 115

DECISION AND ORDER

The U.S. Nuclear Regulatory Commission, Region III, Chicago, Illinois (NRC or Employer) 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 National Treasury Employees Union (NTEU or Union).

After investigation of the request for assistance, the Panel determined that the dispute concerning smoking policy should be resolved through an Order to Show Cause why the Panel should not mandate the following provision:

The Employer shall designate an outdoor smoking area at the parties' current and, when applicable, future location, which (a) is reasonably accessible to employees and (b) provides a measure of protection from the elements.

Written submissions were made pursuant to these procedures, and the Panel has now considered the entire record.

BACKGROUND

The Employer is an independent Government agency whose mission is to regulate civilian uses of nuclear energy and materials in the U.S. It is divided into five regions, with a headquarters office in Rockville, Maryland. The Union represents approximately 1,950 bargaining-unit employees in such jobs as project manager, inspector, engineer, mechanic, and secretary, but the instant

impasse involves about 200 bargaining-unit employees located in the NRC's Chicago Region. The parties recently implemented a successor collective-bargaining agreement replacing the one which expired in 1990.

ISSUES AT IMPASSE

The parties disagree over what the smoking policy should be at both the Employer's current building, and at its future location.

1. The Union's Position

The Union "has no objection to adoption of the wording set forth in the Panel's Order to Show Cause."

2. The Employer's Position

The Employer essentially proposes that: (1) at the current location, (a) smoking be permitted to continue in the vending area and in "private and semi-private offices if occupied only by smokers or by nonsmokers who do not object to smoking in their office," and (b) Regional management be permitted to continue to attempt to "reach an accommodation" when complaints about second-hand smoke arise, which may involve the use of air purifiers or requests to smokers that they keep their doors closed. If accommodation is not possible, "Regional management will designate the area from which the smoke originates as a nonsmoking area;" (2) at the future location, (a) the wording set forth in the Panel's Order to Show Cause be adopted; however, (b) if an outdoor area does not exist at the new location, the Employer be permitted to request that an area consistent with the Panel's wording be constructed; and (c) if, for reasons beyond its control, an outdoor area is not possible, the Employer be permitted to construct a smoking lounge inside with ventilation separate from the rest of the building.

The wording in the Panel's Order to Show Cause should not be adopted to resolve the parties' impasse over the current location because it "would require construction of an outdoor facility at the NRC's present R[egion] III office to protect smokers from the elements." Currently, there is no outdoor smoking area meeting the Panel's description, and expending funds to build one would be inappropriate because the move to a new location may occur in early 1993. Its proposal, on the other hand, is reasonable because it balances the rights of smokers and nonsmokers by limiting employees' exposure to the "significant harmful effects associated with passive smoke." In the past, the Employer "has gone to significant lengths to achieve this balance" by, among other things, purchasing air filters for the vending area and private offices and requiring certain private offices to be declared nonsmoking.

With respect to its future location, its proposal is generally consistent with the Panel's proposed wording, but "allows the flexibility to build a separate ventilated smoking lounge in the building if an outdoor shelter is not possible." Because of the expense associated with the construction of a separately-ventilated indoor lounge, and the fact that "only nine bargaining-unit employees" smoke at the office, this option would only be used as a last resort. Such flexibility is justified "given the uncertain nature of the new location," in that it is possible that "an outdoor smoking shelter would not exist and could not be built." Finally, although its proposal for the current location is the best one under the circumstances, its proposal for the new location reflects "its concern with any exposure to passive smoke."

CONCLUSIONS

Having examined the evidence and arguments presented by the Employer concerning smoking policy, we conclude that the dispute should be resolved on the basis of the wording set forth in the Panel's Order to Show Cause, but modified to specify that, at the future location, if, for reasons beyond its control, the designation of an outdoor-smoking area consistent with the Panel's wording is not possible, the Employer may, at its option, construct an indoor smoking lounge, but only if it is ventilated separately from the rest of the building. In our view, the Employer's proposal regarding the current location must be rejected because, as it itself acknowledges, the protection of nonsmokers from the hazards of secondhand smoke would not be ensured. Moreover, the type of outdoor designated smoking area which ultimately would be required by our wording depends on a number of factors, none of which are clearly indicated in the record. In this connection, the Panel has never determined that outdoor smoking facilities must protect smokers from all types of weather.^{1/} Thus, the Employer's allegation that an outdoor facility necessarily would have to be constructed, and significant funds expended, is largely unsubstantiated.

We are more sympathetic, however, to the Employer's contention that it should be granted some flexibility with respect to the designation of smoking areas at its future location. There are circumstances in which the designation of outdoor smoking areas

1/ See, for example, Department of the Air Force, MacDill Air Force Base, MacDill AFB, Florida and Local 153, National Federation of Federal Employees, Case No. 90 FSIP 217 (December 20, 1990), Panel Release No. 303; and Department of the Navy, Philadelphia Naval Shipyard, Philadelphia, Pennsylvania and Local 3, International Federation of Professional and Technical Engineers and Local 2, Planners, Estimators, Progressmen, and Schedulers, Case Nos. 91 FSIP 57 and 59 (July 23, 1991), Panel Release No. 314.

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consistent with our wording may be impossible.^{2/} The modification specified above should eliminate any danger of secondhand smoke adversely affecting the health of nonsmokers, while accommodating the needs of the nine smokers currently working at the Regional office. For these reasons, we also shall order its adoption.

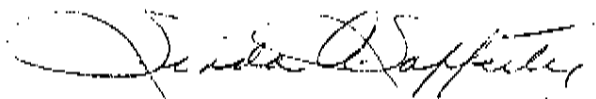
ORDER

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 wording:

The Employer shall designate an outdoor smoking area at the parties' current and, when applicable, future location, which (a) is reasonably accessible to employees and (b) provides a measure of protection from the elements.

At the future location, if, for reasons beyond its control, the designation of an outdoor-smoking area consistent with this wording is not possible, the Employer may, at its option, construct an indoor smoking lounge, but only if it is ventilated separately from the rest of the building.

By direction of the Panel.



Linda A. Lafferty
Executive Director

August 28, 1992
Washington, D.C.

^{2/} See, for example, Department of the Interior, Fish and Wildlife Service Finance Center, Denver, Colorado and Local 3942, American Federation of Government Employees, AFL-CIO, Case No. 90 FSIP 206 (March 1, 1991), Panel Release No. 307.