

## United States of America

## BEFORE THE FEDERAL SERVICE IMPASSES PANEL

DEPARTMENT OF THE ARMY )  
 U.S. ARMY CORPS OF ENGINEERS )  
 WATERWAYS EXPERIMENT STATION )  
 VICKSBURG, MISSISSIPPI )

and )

LOCAL 3310, AMERICAN FEDERATION OF )  
 GOVERNMENT EMPLOYEES, AFL-CIO )

Case No. 92 FSIP.76

DECISION AND ORDER

Local 3310, 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 the Army, U.S. Army Corps of Engineers, Waterways Experiment Station, Vicksburg, Mississippi (Employer).

After investigation of the request for assistance, the Panel directed the parties to meet informally with Staff Associate Ellen J. Kolansky for the purpose of resolving the issues at impasse. The parties were advised that if no settlement were reached, Mrs. Kolansky was to notify the Panel of the status of the dispute, including the parties' final offers and her recommendations for resolving the dispute. After considering this information, the Panel would take whatever action it deemed appropriate to resolve the impasse.

Mrs. Kolansky met with the parties on April 28 and 29, 1992. During the conference, the parties resolved approximately 13 issues or subissues, leaving 2 for the Panel to decide. Accordingly, she reported to the Panel on the remaining issues based on the record developed by the parties. The Panel has now considered the entire record, including her recommendations for settlement.

BACKGROUND

The Employer performs tests and research in areas such as flood and pollution control and rapid air field repair. The Union represents approximately 650 bargaining-unit employees who work in positions such as biological, chemical, and engineering technician, equipment operator, secretary, and clerk. The parties' current

agreement, negotiated in 1977, provides for consultations rather than negotiations. The dispute arose during negotiations for a successor agreement.

### ISSUES AT IMPASSE

Issue I essentially concerns three matters related to administering official time: (1) a final category in a list of activities appropriate for official time; (2) requests for extending the amount of official time approved for a given purpose; and (3) compliance with the official time provisions. Issue II concerns whether the Union should be required to notify the Employer prior to conducting informational picketing.

#### I. Official Time (Administration).

##### a. The Employer's Position

The Employer's proposal is as follows:

Section 5m. Up to 40 hours may be used for statutory union representation duties not specifically listed herein. (To be included in total hours authorized.)

Section 6c. The Union representative will return to his/her work station immediately upon completion of the business for which official time was approved. In the event that the representative's business cannot be concluded within the approved time, the representative will contact his/her immediate supervisor and request additional time and be governed according to the supervisor's direction. [Only the underlined portion is in dispute.]

Section 7. Failure to comply with any provision of this Article may result in denial of official time, and/or a charge to annual leave, leave without pay (LWOP), AWOL, and/or appropriate disciplinary action.

These provisions, taken as a whole, would provide it with greater control over the Union's use of official time. The enumerated list of activities appropriate for official time serves to prevent misuse of official time. By capping the number of hours for unlisted activities (Section 5m), it assures that Union representatives adhere to activities on the list and that mistakes or misunderstandings concerning other appropriate activities would be kept to a minimum. Requiring representatives to abide by their supervisor's instructions regarding extensions of time provides important notice to both the Union and the supervisor about the limitations on the use of official time (Section 6c); listing the consequences for abuse of such time also would provide needed cautionary information (Section 7). In the past, Union

representatives have taken detours when out on official Union business. As an alternative, it also would be willing to add to its proposal: "If additional official time is not granted, the Union representative will return to his work place at the time previously approved with reasonable travel time allowed."

b. The Union's Position

Basically, the Union proposes: (1) a general category to follow a list of specific activities for which official time is appropriate without a limit on how many bank hours could be used for the unlisted activities (Section 5m); (2) to accept all but the underlined portion of the Employer's proposal regarding extensions (Section 6c); and (3) wording such that the parties agree to comply with the provisions of the Article (Section 7). Since the parties have agreed to an annual bank of 2,250 hours in lieu of the current system of reasonable time, it believes that a cap for unenumerated official time activities is unnecessary. Similarly, Union representatives do not need a reminder to abide by their supervisor's decision regarding requests for extensions of official time. Furthermore, such wording might encourage supervisors to deny extensions even though granting additional time might conserve time in the long run by making a second meeting unnecessary. Finally, a statement of joint commitment to abide by the terms of the article might foster a more cooperative atmosphere than the penalty list proposed by the Employer.

CONCLUSIONS

Having considered the circumstances and arguments in this case, we conclude that the parties should adopt the Union's proposals to resolve the impasse concerning what amounts to administrative aspects of official time. Although the Employer has taken disciplinary action against Union representatives in the past for misuse of official time, we believe that the parties' new agreement should eliminate the underlying causes of such discord by providing the Union with a definite amount of official time that it must budget to serve its constituency. Other improvements in the agreement include moving the parties from merely consulting to negotiating in accordance with the Statute. This should put the parties on a better footing, fostering both responsibility for meeting the bargaining-unit employees' needs and the mutual respect that accrues from effective use of the official time bank. We specifically reject limiting to 40 hours the final catchall category in the list of appropriate activities for official time use, since the bank hours already provide an overall limit. Finally, the Employer's proposal to include the list of penalties for failure to comply with the provisions of the article appears unnecessary, since this is incorporated under the right to discipline.

## II. Informational Picketing.

### a. The Employer's Position

The Employer proposes:

Section 4. In keeping with maintaining good faith Union/Employer relations, the Union agrees to provide a 2 working hour "courtesy" notification to the Employer (M-ER Division) concerning the holding of informational picketing. This notification will allow the Employer to respond appropriately (i.e., notify supervisors, traffic control, media response, leave approval). Previously approved leave will not be rescinded for the purpose of interfering with informational picketing.

It claims that advance notice would improve its ability to maintain an orderly workplace during informational picketing. For example, it would be able to instruct supervisors about handling such situations, and control traffic problems arising from distracted motorists along the narrow road at the facility's main entrance. Since it is the main employer in this small Southern town, the picketing likely would attract the attention of the press. Advance notice might permit it to investigate the underlying causes for the picketing to respond accurately to reporters' questions. Time to gather such information might permit development of solutions to problems that prompted the Union to engage in the picketing, thus avoiding or shortening the potentially disruptive event. Finally, providing a disclaimer regarding cancellation of leave would respond to the Union's concern in that area.

### b. The Union's Position

The Union proposes the following:

Although the Union has no statutory or regulatory obligation to inform the agency of its intent of holding an informational picketing, the Union may consider to give the Employer a courtesy 15-minute notice.

In its view, such notice is legally and practically unnecessary. In a culture where the Union is disadvantaged by inferior equipment, part-time staffing, and free-rider problems, and has no right to strike, it would be unfair to diminish the effectiveness of informational picketing by requiring advance notification.

CONCLUSIONS

We are persuaded, based on the arguments developed by the parties, that they should withdraw their proposals concerning this matter. In this regard, we are reluctant to impose a duty on the Union that it is not otherwise legally bound to meet. Although the contract would be silent on the matter, the Union still would be free to notify the Employer before it pickets, and the Employer would be able to prepare for such exigencies by training its supervisors in advance. Furthermore, we are not persuaded that the Employer has demonstrated a need for its proposal, or that its wording would accomplish its stated goals. Finally, neither side suggests that comparable practices prevail elsewhere.

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, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel, under § 2471.11(a) of its regulations, hereby orders the following:

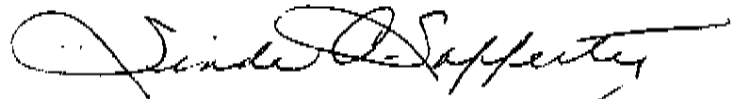
I. Official Time (Administration).

The parties shall adopt the Union's proposal.

II. Informational Picketing.

The parties shall withdraw their proposals.

By direction of the Panel.



Linda A. Lafferty  
Executive Director

July 28, 1992  
Washington, D.C.