United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF AGRICULTURE ANIMAL AND PLANT HEALTH INSPECTION SERVICE PLANT PROTECTION AND QUARANTINE WORK UNIT III, AREA II SOUTH CENTRAL REGION HOUSTON, TEXAS and BRANCH 21, NATIONAL ASSOCIATION OF AGRICULTURE EMPLOYEES	Case No. 91 FSIP 81

DECISION AND ORDER

Branch 21, National Association of Agriculture Employees (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 Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Work Unit III, Area II, South Central Region, Houston, Texas (Employer).

After investigation of the request for assistance, the Panel determined that the impasse concerning overtime assignments should be resolved through written submissions from the parties, 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 now has considered the entire record.

BACKGROUND

The Employer provides inspection and quarantine services relating to the import and export of animals, and animal and agricultural products to the general public and private industry. The Union represents approximately 26 Plant Protection and Quarantine (PPQ) officers who are part of a consolidated bargaining unit of approximately 1,007 General Schedule employees represented by the National Association of

Agriculture Employees (NAAE). They are covered by a national collective-bargaining agreement (CBA) between the Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine and NAAE which is in effect until May 6, 1993; its original term expired on May 6, 1989, but it has been automatically renewed for 1-year intervals since that time. The parties also are covered by a local agreement (port contract) whose expiration date is tied to that of the national CBA.

The dispute arose during impact-and-implementation bargaining over the Employer's change in work coverage at Houston International Airport (HIA), from a two-terminal system with three workshifts to a one-terminal system with four workshifts, when the International Arrivals Building (IAB) was opened. As part of these negotiations, the parties agreed to revisit the overtime-assignment procedure in Article V, of the port contract. The Employer has implemented its procedure for assignment of HIA overtime as set forth below. Under the Union's proposed procedure, it appears that all PPQ officers, whether on seaport or airport duty, would be affected, rather than just those 12 to 15 stationed at HIA.

ISSUE

The crux of the dispute concerns whether off-duty employees should be allowed to work any overtime assignment, limited by their position on the assignment roster only, as the Union proposes, or whether employees' regular workshifts should determine which overtime assignments they may work, as proposed by the Employer.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer proposes that HIA, IAB employees' eligibility for overtime assignments be determined as follows:

> [I.] 0800-1630 Shift (Cargo & PIS [Plant Inspection Station])[:] (1) Cargo (Import/Export) - [w]ork these jobs for any of the times[;] (2) Private/Cargo Planes - [w]ork these jobs for any of the times[; and] (3) Passenger & Passenger Planes - [w]ork these jobs 61 minutes or more after 1900[, but n]one that start after 0600 or later, Monday thru Friday, unless emergency. [II.] 0830-1630 Shift (IAB)[:] (1) Cargo (Import/Export) - [w]ork these jobs 61 minutes or more

after 1630[, but n]one after 0600 or later on their workday[;] (2) Private/Cargo Planes - [w]ork these jobs 61 minutes or more after 1630[, but n]one after 0600 or later on their workday[; and] (3) Passenger & Passenger Planes - [(a)] [w]ork these jobs 61 minutes or more after 1900[, (b)] [w]ork arrivals after 0500[, and (c) w]ork continuation jobs from 1630 and jobs that fall within 60 minutes of the end of their workday. [III.] 1100-1900 Shift (IAB)[:] (1) Cargo (Import/Export) - [w]ork these jobs 61 minutes or more after 1900[, but n]one [that start at] 0600 or later on their workday[;] (2) Private/Cargo Plane - [w]ork these jobs 61 minutes or more after 1900[, but n]one [that start at] 0600 or later on their workday[; and] (3) Passenger & Passenger Planes - [w]ork continuous [jobs] on both ends of their shift plus any job that begins [(a)] 60 minutes or earlier after 1900[, (b)] 61 minutes or later after 1900 until 2330[, and (c)] 61 minutes after 2400. [IV.] 1600-2400 Shift (IAB)[:] (1) Cargo (Import/Export) - [w]ork these jobs 61 minutes or more after 1630 on their day off[, but not] any that begin[at] 0600 or later on their workday[;] (2) Private/Cargo Plane - [w]ork these jobs 61 minutes or more after 1630 on their day off[, but not] any that begin[at] 0600 or later on their workday[; and] (3) Passenger & Passenger Planes - [w]ork those planes that arrive [from] 2400 [to] 0500 only; [V.] Passenger aircraft arrival 0501 to 0830 will be covered by those [o]fficers on the upcoming 0830-1700 shift.1/

In addition, it proposes certain changes to Articles IV and V, of the port contract to "bring [it] in line" with the organizational changes at HIA, including "the creation of a workstation at the Plant Inspection Station." First, it proposes to add a subsection (b) to Article IV, section 5 (4), as follows: "[m]id-[d]ay [s]hift - [o]fficer[] on the mid-day shift may have [] 1 trade per week between [him or her]sel[f] and another airport officer. This trade will be initiated by the [o]fficer on the mid-day shift. Items 1, 2, and 3 of this section will not apply." Second, it proposes to (a) delete Article V, sections 6(5), 10(1)(d), and 10(2)(b), and renumber remaining provisions accordingly, and (b) change references to

1/ Subsection V was added by the Employer in its rebuttal statement of position and is to be included as subsection 4 to Article V, section 6, of the port contract.

Terminals B and C to IAB and Plant Inspection Station, respectively, in Article IV, section 1 (4). Finally, the reference to Terminal B in Article V, section 10(1)(c) would be changed to IAB.

The Employer admits that its procedure limiting the overtime assignments which employees on different shifts are permitted to work is intended to keep the payment of overtime and commuted travel time allowances[2] to a minimum and still accomplish the work in a timely manner. Moreover, its procedure "would assure that all overtime is administered in a manner that is equitable, reasonable, and fair to: (a) the [PPQ] [o]fficers, (b) the Government, and (c) the person(s) or firm(s) that pay for the [inspection and quarantine] services,"[3] which is the policy enunciated in Article V, section 1, of the port contract.

Under the Union's proposed overtime-assignment procedure, the same overtime job may cost the Employer, and in turn the person or firm for whom the work is performed, different amounts depending upon the employee who performs it,[4] which is both "inconsistent [with] and in direct violation of the [aforementioned contract] policy." In this regard, it is unfair to (1) those firms who use the Employer's services, because there is no certainty as to how much they would be charged for the same job, and (2) PPQ officers as a group, because they would not all earn the same amount for the same job. Moreover, permitting airport employees to work maritime overtime jobs and vice versa may interfere with their regular workshifts, because of the approximately 50-mile distance between the airport and seaport. Finally, the Union's proposed procedure is "in violation of [the Employer's] National

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2/ See Animal and Plant Health Inspection Service (APHIS) Directive 402.3, dated March 16, 1984.

3/ Section III of APHIS Directive 402.3, indicates that, by law, the Employer is required to seek reimbursement for inspection and quarantine services from the persons or firms for whom such services are rendered.

4/ This is so because, under APHIS Directive 402.3, if the overtime assignments (a) are not in continuation of, or (b) begin less than 1 hour before the employees' regular workshifts, employees are guaranteed a minimum of 2 hours of overtime pay and a commuted travel time allowance in an amount dependent on the time the work is performed in relation to employees' regular workshifts.

Policy[, that is, APHIS Directive 402.3]."[5]

2. The Union's Position

The Union proposes to (1) delete Article V, section 6, subsections 2, 4, and 5 from the port contract;[6] (2) "eliminate short jobs at the airport;" and (3) "incorporate [] [in] the port contract the [] [following provision:] all qualified officers will be eligible to work any overtime job which is outside of th[eir] [] tours of duty."

This proposed overtime-assignment procedure fairly and equitably balances the interests of all parties concerned, that is, (1) the employees' in "being properly compensate[d] [] for the work done outside [] their tours of duty;" (2) the Employer's in "protecting American [a]griculture;" and (3) the persons' or firms' in having the requested services rendered in a timely fashion. Moreover, it is consistent with the procedures for assignment of overtime at other APHIS facilities, i.e., Dallas International Airport.[7]

The procedure which the Employer proposes and has implemented is "unfair and discriminatory" to employees. In this regard, employees may be involuntarily assigned to work overtime jobs even though there may be other "qualified and available" employees who would be willing to perform the work. Moreover, it serves the interests of the Employer and persons or firms requesting its services at the expense of the employees. Finally, it is inconsistent with the general policy for administering overtime assignments as set forth in Article V, section 1, of the port contract.

5/ The Employer argues this point without explanation.

6/ Subsection 2, provides that "[a]irport overtime jobs occurring [at] 0700-0800 and 1630-1700 will be assigned to the next available airport 0800-1630 [o]fficer[,] excluding commercial passenger flight arrivals." Subsection 4, states that "[o]fficers with a scheduled day off during the basic workweek (Monday-Friday) may accept an overtime assignment that begins after 0500 on their day off." Under subsection 5, only "Terminal C [o]fficers will be responsible for Terminal C overtime."

7/ This point was argued by the Union during the initial investigation of this case, but not discussed in its submissions. Also, no documentary evidence in support thereof was ever provided to the Panel.

CONCLUSIONS

After considering the evidence and arguments presented, we conclude that the parties should adopt the Employer's established procedure governing the assignment of overtime at HIA to resolve the impasse. We are persuaded that this procedure provides for a more reasonable and efficient approach to managing overtime assignments, because it allows for the equitable distribution of available overtime to all airport officers, while controlling overtime costs incurred by the Employer and, in turn, those members of the public making use of its services. Moreover, in our view, it evidences the balancing-of-interests approach to administering overtime provided for under the port agreement. The Union's proposed procedure, on the other hand, appears to be intended to maximize the payment of overtime to airport employees whenever possible, which would benefit them only. Finally, with regard to the Employer's proposed changes to Articles IV and V, of the port contract, no evidence to the contrary having been offered, we believe they are appropriate and necessary; they reflect the change to a one-terminal system and opening of the Plant Inspection Station at HIA.

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:

The parties shall adopt the Employer's proposal.

By direction of the Panel.

Linda A. Lafferty
Executive Director

May 22, 1992
Washington, D.C.