United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF THE ARMY 4th INFANTRY DIVISION FORT CARSON, COLORADO and LOCAL 1345, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case No. 90 FSIP 168

DECISION AND ORDER

Local 1345, 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 section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of the Army, 4th Infantry Division, Fort Carson, Colorado (Employer).

After investigation of the request for assistance concerning provisions for a successor agreement, the Panel initially directed the parties to return to the table for 30 days with the assistance of the Federal Mediation and Conciliation Service. When the parties reported no progress from such efforts, the Panel further determined that selected issues in dispute would be resolved on the basis of written submissions from the parties. After considering the entire record, the Panel would select among the final offers of the parties on an issue-by-issue basis to resolve such items, and take whatever action it deemed appropriate to resolve the remaining items. Written submissions were made pursuant to these procedures and the Panel has now considered the entire record. In addition to the conclusions indicated within, in accordance with section 2471.6(a)(2) of its regulations, the parties shall resume negotiations, with mediation assistance as necessary, and make a status report to the Panel no later than 45 days after receipt of this Decision and Order as to progress with respect to any other unresolved issues.

BACKGROUND

The Employer trains infantry and operates a medical center. The Union represents approximately 1,500 employees in a consolidated bargaining unit who work as registered nurses, medical technicians, janitors, clerks, maintenance repairers, truck drivers, and in personnel service and child care. The parties' collective-bargaining agreement was to have expired in 1989; however, its provisions continue in effect until negotiations for the successor agreement are complete.

ISSUES AT IMPASSE

The issues chosen for final-offer selection are: (1) official time for the Union's president, executive vice president, and treasurer; (2) Union office space and utility fees; (3) rotation procedures for overtime; (4) scope of the grievance procedure; and (5) distribution of incentive awards.

1. Official Time

a. The Employer's Position

The Employer proposes the following:

> Reasonable official time, during normal work hours, when requested, will be granted to Union officers and stewards to represent employees of the bargaining unit covered by this agreement and for attendance at required hearings and meetings with management officials in which bargaining-unit members are involved. Reasonable official time will also be allowed for such representatives to meet with bargaining-unit employees to discuss, prepare for, and present grievances, appeals, and complaints.
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> a. It is understood by the parties that reasonable time for the purposes listed above will not exceed the following:
>
> President 20 hours per week
>
> Executive Vice President 20 hours per week.

It asserts this represents a 33-percent increase over amounts granted in the parties' current agreement at a time when the bargaining unit has shrunk from 1,921 to 1,506

employees. Other provisions would permit additional time for stewards, labor-management activities, and training. The Union also could take fuller advantage of its 34 division representatives and 9 committee members to perform representational functions, and has access to outside counsel for Merit Systems Protection Board and Federal Labor Relations Authority proceedings. The Employer remains unconvinced that a greater increase is justified.

b. The Union's Position

Under the Union proposal, 100-percent official time would be afforded to its president or designee to perform representational activities; 20 hours per week for the executive vice president or designee; and 4 hours per week for the secretary-treasurer. The sole arguments offered by the Union are that such amounts are justified by the size of the bargaining unit and its receipt of an "unending" stream of employees' complaints.

CONCLUSIONS

We find that the Employer's proposal which would increase amounts available in the parties' current agreement provides a reasonable basis for resolving this matter. In our view, 20 hours each for the Union's president and vice president, plus other reasonable time available to division representatives and committee members should be sufficient for conducting representational activities. While the Union argues that it needs 100-percent official time for its president, we believe that the meager record it presents is insufficient to justify such an increase.

2. Union Office Space

a. The Employer's Position

It proposes:

> The Union agrees to enter into a no-fee lease with the Corps of Engineers for its use of Building 6034 in accordance with the provisions of 10 U.S.C. § 2667.1/ The Union further agrees the facility will be used exclusively by this bargaining unit.

1/ Section 2667 provides for leases of non-excess property by military departments.

The Employer asserts that continuation of cost-free office space for use by the Union would facilitate its performance of representational activities. In its final offer, it no longer would require the Union to pay for utilities. By its final sentence, the Employer hopes to eliminate the problems stemming from the Union's previous use of the facilities to represent employees of Evans Army Community Hospital, a private-sector contractor.

b. The Union's Position

It urges the Panel to adopt the following:

> AFGE (the Union) shall retain the use of its present office, building 6034, and the facilities furnished with it, for at least the life of this agreement. Space and utilities shall be provided at no cost to the Union and maintenance of the building and grounds shall be given the same priority as Command Headquarters. In the event it is necessary to relocate the Union office, the Union will be immediately provided equivalent space and facilities (including parking) at a nearby location. Such move will be made at no cost to the Union. The Union will approve or disapprove such space and facilities prior to any actual relocation.

In the Union's view, the provision would facilitate its performing representational activities without necessitating extra expenditures either for rent or utilities. In addition, it would provide a procedure should the office be relocated, including the right to unilateral approval under such circumstances.

CONCLUSIONS

We are persuaded that the Employer's proposal provides a straightforward resolution of the dispute concerning the Union's office space, and, accordingly, shall order its adoption. In this regard, it recognizes the purposes contemplated by the Statute for such space, and may put to rest a nagging institutional problem. Furthermore, we are persuaded that any future decision to relocate the office should be negotiated at that time, in accordance with statutory requirements. Moreover, without evidence to indicate problems with the maintenance of the facility, it appears wiser to leave such matters to the parties' negotiated grievance procedure.

3. Distribution of Overtime

a. The Employer's Position

The Employer proposes that:

Article 14, Section 2:

The scheduling of overtime work, the nature of the work to be performed, the need for identifying special skills, the priority of work to be performed and the number of employees required to work is solely a function of the Employer. The Employer retains the right to direct an employee to work overtime. Consideration for overtime will first be given to those employees currently assigned to the job. The Employer will then consider volunteers from those employees qualified to do the job. If the above provisions do not result in the availability of adequate qualified personnel for overtime work, or it results in an excess number, overtime work will be rotated equitably among qualified employees in the organizational segment concerned. It is understood that temporary imbalances are permitted in the equitable distribution of overtime due to certain factors such as leave, continuity on jobs of short duration or skill requirements.

The Employer asserts that the provision would commit it to distributing overtime equitably, but without requiring it to develop and maintain exhaustive records to track the assignment of overtime. Furthermore, under the final sentence, should it select certain employees because they possess needed skills or to maintain continuity on a project, such selections should not elicit charges of unfairness.

b. The Union's Position

The Union's proposal is as follows:

Article 9

Section 1:

Overtime and premium pay will be paid IAW applicable law and regulations. Overtime shall be distributed on

a fair and equitable basis to all employees with the required knowledge and skills as may be necessary to accomplish the work within the assigned element. The scheduling of overtime work, the nature of the work to be performed, the need for identifying special skills, the priority of work to be performed and the number of employees required to work overtime are to be determined by the Employer. First consideration for overtime will be given to those employees who are currently assigned to the job for which overtime is required. Second overtime assignments will be offered to qualified employees on the basis of the number of cumulative hours each has worked or declined overtime, starting with the employee with the least cumulative amount of overtime. It is agreed that overtime offered to an employee and not worked shall be counted for the purpose of fair and equal distribution.

Section 5

Overtime offered to an available employee and not worked shall be counted as overtime worked for the purposes of the overtime distribution procedures in this Article. Employees who are on leave, TDY,[2/] or otherwise not available shall not be considered available for overtime assignments. Under such circumstances, the employees shall maintain their position on the list of available employees for overtime assignments and shall be subject to selection for overtime upon return to duty at Ft. Carson. Leave will not be the excluding factor in the distribution of overtime.

In support of its position, the Union notes its agreement with a portion of the Employer's proposal relating to the Employer's right to schedule and select the work to be performed, and identify the special skills, priorities, and number of employees required to perform the work. Although the wording varies slightly, it also is in agreement with giving first consideration to those who are in jobs for which the overtime is required. Furthermore, it acknowledges the Employer's right to assign overtime to employees it deems qualified.

2/ TDY is an abbreviation for "temporary duty." By common usage, it refers to the assignment of an employee to a location other than his usual work site.

CONCLUSIONS

A comparison of the provisions regarding overtime persuades us that the Union's proposal provides an equitable basis for resolving the issue in dispute. While it might generate more paperwork than the Employer's proposal, it would create a record to substantiate the equitable distribution of overtime hours. Furthermore, employees would be assured that declining overtime assignments because of leave or TDY would not affect future opportunities to work overtime.

4. Scope of the Grievance Procedure

a. The Employer's Position

In its proposal, the Employer specifically lists both those matters defined as grievable under 5 U.S.C. § 7103 (a)(9) and those matters excluded under 5 U.S.C. § 7103 (a)(14) and § 7121(c). Other proposed exclusions from the parties' negotiated grievance procedure are the following:

> (6) Nonselection for promotion from a group of properly ranked and certified candidates.
>
> (7) An action terminating a temporary promotion within a maximum period of 2 years and returning the employee to the former position or comparable position from which he/she was temporarily promoted or reassigned.
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> (8) Nonadoption of a suggestion or disapproval of a quality step increase, performance award, or other kind of honorary or discretionary award.
>
> (9) A preliminary warning or notice of a specific action, which, if effected, would be covered under the grievance system (e.g., a notice of proposed suspension, proposed termination).
>
> (10) Termination of temporary or probationary employees.
>
> (11) Counseling conducted in accordance with the provisions of Article 15 of this agreement.

It states that its provision is identical to that in the parties' two previous agreements except that it adds item 11,

concerning employees' record cards.[3/] Providing an accessible list in the parties' contract indicating which subjects are grievable or nongrievable would be useful to employees who otherwise may not know what may be grieved.

b. The Union's Position

It proposes the following:

> A grievance is any complaint within the definition in 5 U.S.C. § 7103 (a)(9). Unless excluded by specific language in this agreement, a grievance may be filed over any matter grievable under law. Where a statute provides a longer period of time to file a claim than that provided in this Article, the statutory period shall control.

The Union asserts that it seeks to broaden the parties' negotiated grievance procedure. It states it intends only to exclude reductions-in-force and within-grade-increase denials, but would permit Employer-filed grievances, as specified in other sections of the agreement.

CONCLUSIONS

We conclude that the issue should be resolved by adopting the Union's proposal. In this regard, we do not find that the Employer offers sufficient justification for its proposal.[4/] Although specifically listing the subjects excluded from coverage might be useful to employees, we believe that employees' interests are better served by a less restrictive negotiated grievance procedure. Furthermore, Union representatives would be available, among other things, to assist employees in understanding whether a matter may be

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3/ The Employer describes these as providing "a summary of the employee's record of routine administrative actions as well as entries of discussions and/or counseling sessions involving the employee."

4/ In Vermont Air National Guard, Burlington, Vermont and Association of Civilian Technicians, Inc., 9 FLRA 737 (1982), the Federal Labor Relations Authority assigned the burden of proof to the party seeking to narrow the scope of the negotiated grievance procedure.

grieved under the contract and law. With respect to the last sentence of the proposal concerning the application of statutory deadlines, we find that this would benefit employees with no discernible negative impact on the Employer.

5. Incentive Awards

a. The Employer's Position

Under the Employer's proposal, basically, the Union would be permitted a member on the incentive awards committee who would participate in recommending nominees for awards and evaluating the awards program. The committee would have access to figures concerning the number of awards to supervisors, nonsupervisors, and minority groups. Both the Union president and the base commander would receive recommendations from the committee for action to correct imbalances in distribution of awards, and consult with each other on ideas for improvements. The Employer states that the committee's continuing monitoring of the distribution of incentive awards would allow the Union, through its representative, to suggest or consult on imbalances which may arise under the system. In its view, the committee approach offers flexibility, especially should unanticipated problems arise.

b. The Union's Position

Essentially, the Union's proposal would create an incentive award fund or pool for bargaining-unit employees by dividing the amount budgeted by the Employer for awards by the percentage of bargaining-unit employees in the work force. In support of its position, the Union asserts without providing support that it is negotiable.

CONCLUSIONS

In the absence of objective evidence to indicate what problems either party's provision might address or what goal is sought, we are persuaded, on balance, that the Employer's proposal provides an equitable basis for resolving the dispute concerning incentive awards. In this regard, input from a Union representative serving on the incentive awards committee may increase the Employer's awareness of problems relating to the distribution of awards. Furthermore, ideas such as a pool for awards may be considered and recommended by the committee.

ORDER

Pursuant to the authority vested in it by section 7119 of the Federal Service Labor-Management Relations Statute and because of the failure of the parties to resolve their dispute during the course of proceedings instituted pursuant to section 2471.6(a)(2) of the Panel's regulations, the Federal Service Impasses Panel under section 2471.11(a) of its regulations hereby orders the following:

1. Official Time

The parties shall adopt the Employer's proposal.

2. Union Office Space

The parties shall adopt the Employer's proposal.

3. Distribution of Overtime

The parties shall adopt the Union's proposal.

4. Scope of the Grievance Procedure

The parties shall adopt the Union's proposal.

5. Incentive Awards

The parties shall adopt the Employer's proposal.

By direction of the Panel.

Linda A. Lafferty
Executive Director

July 24, 1991
Washington, D.C.