

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

DEPARTMENT OF THE ARMY)
PRESIDIO OF SAN FRANCISCO)
SAN FRANCISCO, CALIFORNIA)

and)

LOCAL 1457, AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES, AFL-CIO)

Case No. 91 FSIP 85

DECISION AND ORDER

Local 1457, 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, Presidio of San Francisco, San Francisco, California (Employer).

The Panel determined that a selected number of issues in dispute should be resolved on the basis of written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the impasse after considering the entire record. It also determined that the parties should (1) resume negotiations following receipt of the Panel's Decision and Order over the remaining issues and (2) take any that remain unresolved to a private mediator-arbitrator of their choice with expenses to be shared. Written submissions were made pursuant to these procedures and the Panel has now considered the entire record.

BACKGROUND

The Employer provides basic services to military personnel and dependents. The Union represents 475 employees^{1/} in 5

1/ Union Recognition in the Federal Government, Statistical Summary, Summary Reports within Agencies and Listings within Agencies of Exclusive Recognitions and Agreements as of January 1991, U.S. Office of Personnel Management, pp. 184-85 (1991).

separate bargaining units, who work as medical clerks, technicians, warehousemen, cashiers, and mechanics, in both General Schedule and Wage Grade positions. Although the parties' multiunit collective bargaining agreement, the subject of these negotiations, expired in 1985, it remains in force until the new agreement is in place. According to the Employer, the Presidio likely will close by 1995.

The dispute arose during negotiations for a successor agreement. Nearly the entire agreement remains unresolved.

ISSUES AT IMPASSE

The matters selected for resolution by the Panel are: (1) official time for representational purposes and the activities for which such time may be used; (2) official facilities and equipment; (3) tools; (4) scope of the grievance procedure; and (5) continuation of past practices.

1. Official Time

a. The Union's Position

Under the Union's proposal, basically the Union president or his designee would retain 100-percent official time; the unit vice presidents, chief steward, and stewards would be allocated reasonable official time as needed to perform their representational functions. Additional official time would be provided for witnesses and those designated to represent employees in arbitrations or statutory hearings; a nonexclusive list of 12 other functions also would be authorized. It further proposes that:

The acceptance of a full-time Union position will not adversely affect the permanent status of that individual's official job/position. Individuals who fill full-time Union positions will return to the job/position they held prior to becoming a full-time Union representative, with all rights and benefits afforded that job/position.

As to the amounts to be allocated for the Union president, the Union states that its provision would maintain the status quo during the critical period of base closure. Although the official time provision in the expired agreement granted the Union a bank of 2,570 hours to be divided between 25 officers and stewards, in a practice recognized by a Federal Labor Relations Authority (FLRA) decision stemming from an unfair

labor practice (ULP) complaint, the Union president was accorded 100 percent official time. This practice evolved to meet the real needs of the bargaining unit, and current activity levels justify its continuation. Over time, the president has become a "one-man show" who often faces sophisticated, seasoned representatives from the Employer's team; he ensures continuous coverage in the Union's office for employees seeking the Union's assistance, and represents them at Merit Systems Protection Board (MSPB), arbitration, and ULP hearings.

Regarding amounts for other officials, many shop stewards have been suspended, removed, or subject to RIFs, thereby hampering the sharing of representational duties, and explaining the primacy of the Union president's role. The lack of grievances reported by the Employer may stem more from these problems than from the lack of grievable issues. Also, such officials are not trained to handle the complex issues relating to RIFs and the base closure. The time the Employer offers would not even cover such training. Furthermore, the use-or-lose system offered is a mere paper increase. Under current circumstances, a reasonable-time system would be more effective. It presents no arguments regarding the activities for which official time should be used.

b. The Employer's Position

The Employer essentially proposes that: (1) The following hours be granted per pay period: 32 hours for the president, 8 hours for 5 vice presidents and the chief steward, and 4 hours for up to 14 stewards; (2) such time be used for representational purposes; specifically, formal meetings, grievances, representation at formal disciplinary proceedings, Union-Employer and committee meetings provided for by contract, representing employees at investigatory meetings when requested by the employee, to prepare for third-party proceedings (arbitrations), and contract administration (Union president only); (3) official time not be charged for time spent negotiating or participating in proceedings before the FLRA; (4) only 1 steward be permitted official time in a given case; and (5) official time be limited to performing approved Union activities in the unit to which representatives have been appointed, and such representatives be authorized to represent employees only in the units in which they are employed.^{2/}

^{2/} See Appendix A for the full text of the Employer's proposal.

As to official time for the Union president, the Employer believes that its offer is more than sufficient considering that the president represents by its calculations only 158 employees in his bargaining unit,^{3/} and administers a contract covering only 354 employees in 5 separate bargaining units. Its offer represents a 28-percent increase over official time available under the expired agreement, or 10 hours per employee per year. Its offer also is comparable to what other union representatives receive within Forces Command, the entity in charge at the Presidio. In this regard, only 2 installations have full-time union representatives -- Fort Hood, Texas, and Fort Campbell, Kentucky -- and they represent 3,000 and 1,900 bargaining-unit employees, respectively. Moreover, the abuse of official time, including the repetitive filings of unit clarification petitions, attempts to represent the employees of different agencies, and the filing of an average of 95 ULPs per year might be curbed if the Union were forced to budget its time. It states that 85 percent of these and all subsequent appeals were dismissed.

CONCLUSIONS

We find that the Employer's proposal, which is an increase over amounts specified in the parties' expired agreement, but less than that currently in use under an established practice, provides a reasonable basis for resolving this matter. In our view, 32 hours for the Union's president plus a bank of hours for other Union officers and stewards should be sufficient for conducting representational activities for bargaining units of these sizes. Besides, such amounts would be augmented by additional time for negotiations, FLRA proceedings, and Union-sponsored training. While we recognize the serious nature of the problems the parties face stemming from the base closure, greater amounts are not warranted. Furthermore, should an unforeseen need arise, such limits may be exceeded under a provision in the Employer's proposal "by mutual consent for good and sufficient reason."

^{3/} The Employer notes that under well-established FLRA case law, official time is not granted to Union representatives who are "not employed in the bargaining unit in which the representational activity was being conducted." See, American Federation of Government Employees, Local 2225 and U.S. Department of Defense, Naval Air Rework Facility, Norfolk, Virginia, 19 FLRA 212, 213 (1985).

2. Official Facilities and Equipment

a. The Union's Position

Basically, the Union proposes that the Employer continue to furnish adequate, cost-free office space with a typewriter, copy machines, paper, FAX machine, computer and printer, and Autovon telephone service. Other facilities would be made available on request for special meetings, and two reserved Union parking spaces provided for each bargaining unit.

The Union proposes expanding the kinds of office equipment the Employer already provides to support increased representational activities spawned by RIFs and the upcoming base closure. Since such equipment likely is within the Employer's inventory, it is not asking the Employer to buy anything; the Union claims it cannot afford to make such purchases itself. It notes, moreover, that the Panel has adopted proposals granting unions access to Autovon service and reserved parking spaces in previous cases.

b. The Employer's Position

In essence, it proposes to provide the Union with: (1) office space depending on availability; (2) additional space for special meetings; and (3) access to the Presidio telephone system. The Union is to be responsible for: (1) any costs associated with use of the space or expanding telephone service, and (2) housekeeping inside and outside of the office. Specifically banned would be the use of the Union hall as a residence, and copiers and other equipment for internal Union business. It would permit the Union to use the Employer's copying and facsimile machines, telephones, and computers with prior permission from the labor relations specialist.^{4/}

It claims that it cannot guarantee absolutely that it would be able to continue to provide Union office space as the base begins to close. Also, it believes that the Union should contribute to the running of its organization. It would, of course, give the Union access to equipment such as copiers and FAX machines, but with permission. Its proposals, however, are aimed at curing nagging problems such as the use of the Union's office as a residence and past abuse of equipment privileges. During negotiations, the Union president reportedly stated he made over 15,000 copies on more than 1 occasion.

^{4/} See Appendix B for the full text of the Employer's proposal.

CONCLUSIONS

We are persuaded that the parties should adopt the following compromise provision: (1) the Union's proposal on cost-free office space, the use of other facilities, and two reserved Union parking spaces for each bargaining unit; and (2) the Employer's proposal regarding equipment. We believe the Union's proposal provides a more straightforward approach to the dispute concerning office space by leaving no doubt about the Employer's contractual obligation to provide cost-free space. Furthermore, the Employer has provided little if any evidence to indicate problems with the maintenance of the facility. As to equipment, the Employer has demonstrated a need to maintain greater control over its use. We favor its provision, therefore, because it provides a procedure for the Union's gaining access to equipment for its reasonable requirements in a way that may put to rest the past problems the Employer has identified.

3. Tools

a. The Union's Position

The Union proposes that "the Employer will provide employees with all tools and equipment necessary to perform their job." It argues that leaving the financial burden for purchasing tools to be used for the Government's benefit on the Employer would be fairer than shifting it to relatively low-paid employees, especially as those same employees may be faced with loss of employment when the base closes. It also argues that the Employer is in the best position to remedy any problems associated with its purchase of substandard tools through its procurement procedures.

b. The Employer's Position

The Employer proposes that employees in the Directorate of Engineering and Housing only provide their own manual tools associated with their craft or trade. Also, it would accept that part of the Union's original proposal submitted to the Panel with its request for assistance that reads:

When required for work accomplishment, the Employer will provide tools and equipment which are considered not in general use in the trade, such as power tools, test gear, oversize tools, and other specific purpose specialized tools unique to the operations of the Employer.

In its view, requiring employees to provide the manual tools of their trade is comparable to the custom in the private sector. The Government might save as much as \$128,000 annually and obviate the need for expensive monitoring and inventorying procedures. Furthermore, it would encourage employees to be responsible for the care of their tools. Moreover, employees could procure better quality tools than those supplied by the Government through its competitive bidding procedures.

CONCLUSIONS

Upon careful consideration of the evidence and arguments presented by the parties in this matter, we believe that the Union's proposal regarding tools should be adopted. Maintaining the status quo, in this instance, would be fairer than requiring lower graded employees to shoulder equipment expenses, especially when faced with uncertain prospects for continued employment. Furthermore, the Employer already has a supply of such tools on hand. We reject as patently unpersuasive arguments based on the failure of the procurement process to obtain good quality tools. Certainly, the Employer is in the best position to remedy this kind of problem, and to deal with those related to the mishandling or loss of tools by employees.

4. Scope of the Grievance Procedure

a. The Union's Position

Essentially, it recites the relevant provisions of the Statute concerning the subjects to be included in, and excluded from, the negotiated grievance procedure.^{5/} It argues that this would permit the broadest legally sufficient scope for the parties' negotiated grievance procedure.

b. The Employer's Position

The Employer's proposal differs from the Union's in that it also would exclude from the negotiated grievance procedure: (1) oral admonishments; (2) terminations of benefits under certain reduction-in-force conditions; (3) the separation of probationary employees, and (4) preliminary warnings of actions which, if taken, could be grieved or appealed by statute. It notes that while the parties' positions are not very different, making oral admonishments nongrievable may encourage supervisors to take such actions rather than seeking more severe penalties.

^{5/} 5 U.S.C. sections 7103(a)(9) and 7121(c)-(e).

CONCLUSIONS

On balance, 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.^{6/} Both parties' proposals provide a list of the subjects that may or may not be grieved.

5. Past Practices

a. The Union's Position

The Union proposes the following:

This agreement does not waive or rescind any past practices. All past practices that are not addressed by this agreement shall remain in effect.

In its view, maintaining the practices that have evolved over time or were established through third-party decisions would preserve important and valued workplace conditions. Further, continuing to follow such practices could save time by eliminating the need to negotiate such matters during these negotiations.

b. The Employer's Position

The Employer proposes:

Section 1. By entering this agreement, the Employer and Union agree that this negotiated agreement represents the embodiment of collective bargaining.

Section 2. By entering into agreement, the Employer hereby rescinds and extinguishes any and all past practices regarding personnel policies and practices and matters affecting working conditions.

It states that the Union is free to bring to the bargaining table any past practice that it proposes be continued. Its

^{6/} In Vermont Air National Guard, Burlington, Vermont and Association of Civilian Technicians, Inc., 9 FLRA 737 (1982), the FLRA assigned the burden of proof to the party seeking to narrow the scope of the negotiated grievance procedure.

negotiators requested this during negotiations, but the Union was not forthcoming. It argues that an all-encompassing collective bargaining agreement, available for easy reference, would produce less confusion than having a second set of unwritten, sometimes poorly understood, or vague practices, especially in an already chaotic base-closure environment.

CONCLUSIONS

The parties should adopt the Employer's proposal regarding the continuation of past practices. On balance, while we recognize the importance of such matters to employees, which often apply only to limited segments of the workplace, we believe that bringing such matters to the bargaining table during contract negotiations would serve to reduce confusion that can arise when no one is certain about the exact terms of a practice. This provision also should serve to put the Union on notice that to be preserved such matters must be specifically identified and brought to the bargaining table.

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.^{7/}

2. Official Facilities and Equipment

The parties shall adopt a compromise provision consisting of the Union's proposal on official facilities, facilities for special meetings, and two reserved parking spaces for each bargaining unit, and the Employer's provision regarding equipment.^{8/}

^{7/} See Appendix A for the complete version of the Employer's proposal.

^{8/} See p. 8 supra and Appendix B.

3. Tools

The parties shall adopt the Union's proposal.

4. Scope of the Grievance Procedure

The parties shall adopt the Union's proposal.

5. Past Practices

The parties shall adopt the Employer's proposal.

By direction of the Panel.



Linda A. Lafferty
Executive Director

December 30, 1991
Washington, D.C.

APPENDIX A

The Employer's proposal on official time is:

OFFICIAL TIME

SECTION 2. To perform representational activities expressly provided for by the terms of this agreement, the Employer agrees to grant official time to properly elected or appointed and recognized Union officers and stewards. The amount of official time to [be] granted to officers and stewards is as follows:

President	32 Hours per pay period
Vice-Presidents (5)	8 Hours per pay period
Chief Steward	8 Hours per pay period
Stewards (NTE 14)	4 Hours per pay period

SECTION 3. The use of official time will be permitted for only one steward or officer at any time for each case, complaint, or meeting unless otherwise provided for in this agreement. In this regard, official time will not be granted to Union stewards except when performing approved Union activities in the unit they have been appointed to represent. Similarly, official time will not be granted to Union officers except when performing approved Union activities in the unit they have been appointed to represent. Nothing in this article precludes an officer from also acting as a steward. No official time will be granted to an officer when acting as a steward except when the designated steward is not available or the steward is not capable of handling, due to the complex nature of the complaint, the grievance.

SECTION 4. The following activities may be performed without charge to approved leave or the official time granted under Section 2 of this article:

- A. Negotiations within the meaning of 5 U.S. Code 7131 (a).
- B. Participation in proceedings of the Federal Labor Relations Authority with the meaning of 5 U.S. Code 7131 (c).

SECTION 5. The following activities may be performed with charge to the official time granted in Section 2 of this article:

- A. Prepare for and attend formal meetings called by the Employer.
- B. Prepare and present employee grievances. Normally, grievances at steps one and two will be handled by stewards, grievances at step three will be handled by an Union officer.
- C. Prepare and present Union grievances.
- D. Entertain, investigate, and prepare response to Employer grievances.
- E. Represent unit employees in formal disciplinary proceedings.
- F. Participate in periodic Union/Employer meetings, panels, and committee meetings which are expressly provided for by this agreement.
- G. Represent employees during investigatory meetings when requested by the employee.
- H. Prepare for third party proceedings (i.e., arbitrations).
- I. Participate in third party proceedings (i.e., arbitrations) in either a representational or witness capacity.
- J. Official time will be granted to the Union president for contract administration.

SECTION 6. Official time will only be authorized for officers/stewards to represent employees in the units that the officers/stewards are employed in.

SECTION 7. It is agreed that activities concerned with internal management of the Union and activities not specifically provided for by this agreement shall be performed during the non-duty hours of the Union representatives and employees concerned. Such activities are, but not limited to, the solicitation of membership, collection of dues, and distribution of literature.

SECTION 9. Recognized officers/stewards may be granted a limited amount of excused absence to attend Union-sponsored training provided the subject matter of the training is of mutual benefit to the Employer and the Union and the Employer's interest will be served by the attendance of the Union representative(s). Excused absence will be authorized to cover only those portions of a training session which meet the criteria of this section and will not exceed eight (8) hours per calendar year for each of up to five (5) Union officers/stewards. The exact amount of excused absence utilized by such Union officers/stewards, not to exceed eight (8) hours, will be determined by the Union president. The total amount of excused absence for Union-sponsored training will not exceed forty (40) hours in any calendar year. Exceptions to this policy may be made on a case by case basis with mutual consent.

The official time limitations which are established by this article may be exceeded by mutual consent of the parties. All such exceedings will be for good and sufficient reason and will be handled on a case by case basis.

APPENDIX B

The Employer's proposal on official facilities and equipment is:

USE OF OFFICIAL FACILITIES

SECTION 1. Office Facilities: The Employer agrees that the Union will be provided office space on the installation for use by the Union depending on the availability of such space. The addition or change of utilities or the modification of the structure are responsibilities of the Union. These additions, changes, or modifications must have the prior approval of the Employer or his agent. The Union agrees to pay any costs involved in the use of the office space. Any arrangements for telephone service, other than Presidio Telephone Service, must be made through the Employer with the Union assuming all costs. Whenever possible the Union will be given a thirty (30) work day notice if the need should arise to require moving to another location.

SECTION 2. Housekeeping: The Union will be responsible for general housekeeping of the office space and the immediate exterior area to a distance of 25 feet from the occupied area of the building.

SECTION 3. The Union will provide it's own copy machine(s) for the use of Union officials, official U.S. Government copiers shall not be used for Union business.

Union representatives shall not utilize the Union Hall as a place of residence.

The Employer will make a reasonable effort to provide the Union with facilities to hold special meetings with members of the Union. The Union agrees to request such meeting space 5 working days in advance. The Union agrees to clean up such areas after their use of the meeting space.

OFFICIAL EQUIPMENT

SECTION 1. The Union agrees that all office equipment on the Presidio of San Francisco is the property of the Employer and the Union is not entitled to use that equipment without permission of the Employer. Such equipment consists of but is not limited to copying machines, facsimile machines, telephones, and computers.

SECTIONS 2. Should the Union require the use of office equipment, it will request permission to do so from the Employer's labor relations specialist. Requests will include the equipment to be used and the reasons the equipment is necessary. The labor relations specialist will consider the request and inform the Union whether or not the request will be granted. Under no circumstances will the Employer's equipment be used for internal Union business. When the Union is granted permission to use the Employer's office equipment, that use will be during normal duty hours and will be subject to the policies and limitations of the Employer concerning the equipment.