

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

DEPARTMENT OF HEALTH AND HUMAN)
SERVICES)
SOCIAL SECURITY ADMINISTRATION)
BALTIMORE, MARYLAND)

and)

NATIONAL COUNCIL OF SOCIAL)
SECURITY PAYMENT CENTER LOCALS,)
AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES, AFL-CIO)

Case No. 91 FSIP 92

DECISION AND ORDER

The National Council of Social Security Payment Center Locals, American Federation of Government Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses 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 Health and Human Services, Social Security Administration, Baltimore, Maryland (Employer).

After investigation of the request for assistance, the Panel directed the parties to meet informally with Staff Associate Gladys M. Hernandez for the purpose of resolving the impasse concerning the procedure for assignment of SPIKE duties.^{1/} The parties were advised that if no settlement were reached, Ms. Hernandez would report to the Panel on the status of the dispute, including the parties' final offers, and her recommendations for resolving the impasse. After considering this information, the Panel would take whatever action it deemed appropriate to resolve the impasse, including the issuance of a binding decision.

^{1/} These duties involve answering telephone inquiries from the general public that come in through the Employer's national "1-800 number" during peak or "spike" periods only. Essentially, when the "1-800 number" traffic peaks, calls are rerouted from the Teleservice Centers to the Program Service Centers (PSC), where they are handled by trained SPIKE employees. Their workstations have been equipped to receive such calls.

Ms. Hernandez met with the parties on October 17, 1991, at the Panel's offices in Washington, D.C., but the parties were unable to reach a settlement.^{2/} She has reported to the Panel based on the record developed by the parties. The Panel now has considered the entire record in the case.

BACKGROUND

The Employer administers the Old Age, Survivors, and Disability Insurance and Supplemental Security Income programs for the general public. The Union represents approximately 10,000 General Schedule employees stationed at the 6 PSCs nationwide,^{3/} who are part of a consolidated bargaining unit of approximately 48,200 employees represented by the American Federation of Government Employees (AFGE). These employees hold such positions as benefit authorizer, recovery reviewer, post-entitlement technical expert, claims clearance review examiner, contract specialist, and inquiries examiner. They are covered by a master collective-bargaining agreement between the Employer and AFGE which is in effect until January 24, 1993.

The dispute arose during negotiations over the Employer's proposed assignment of benefit authorizers at three PSCs, namely, the NEPSC, MAMPSC, and WNPSC, to SPIKE units.^{4/} The parties indicated, however, that all of the approximately 2,000

^{2/} At the conclusion of their meeting with Ms. Hernandez, the parties exchanged their final proposals and were given until November 1, 1991, to submit their written summary statements of positions. The submission date was extended to November 8, 1991, after the parties entered into further negotiations on the issues at impasse, but once again they were unable to reach an agreement. The Employer submitted a summary statement of position; the Union did not.

^{3/} The organizational names and locations of the PSCs are as follows: (1) the Northeastern PSC (NEPSC) in Jamaica, New York; (2) the Mid-America PSC (MAMPSC) in Kansas City, Missouri; (3) the Western PSC (WNPSC) in Richmond, California; (4) the Southeastern PSC (SEPSC) in Birmingham, Alabama; (5) the Great Lakes PSC (GLPSC) in Chicago, Illinois; and (6) the PSC in Philadelphia, Pennsylvania, whose name the parties did not provide.

^{4/} The SEPSC and the GLPSC already have functioning SPIKE units; the GLPSC has a negotiated agreement concerning assignment of SPIKE duties with the local AFGE affiliate. Currently, no SPIKE unit is planned for the PSC in Philadelphia.

benefit authorizers nationwide would be affected by the outcome of the dispute.^{5/} The provisions which the parties agreed to earlier, as well as that which the Panel will impose in this case, will be set out in a memorandum of agreement (MOA) to be executed by the parties. This MOA will govern the relationship between the parties regarding the establishment of SPIKE units at all PSCs and also will supersede existing local SPIKE agreements.

ISSUES

The crux of the dispute concerns (1) the criterion for not accepting volunteers from outside the module having the SPIKE position vacancy; and (2) what should be the organizational unit of consideration (module or section) for involuntary assignment to a SPIKE position vacancy.^{6/}

POSITIONS OF THE PARTIES

1. The Union's Position^{7/}

The Union proposes the following:

When assigning employees to handle SPIKE duties, management will solicit volunteers from among qualified employees within the module having the [SPIKE] vacanc[ies]. If there are more than enough volunteers, selection will be made by seniority. Prior to making involuntary assignments, management will solicit volunteers from within the section [with the module having the SPIKE position vacancies] or

^{5/} This is so because, since the Union filed the request for Panel assistance, the Employer has revised the position description for all benefit authorizers to require the performance of SPIKE duties.

^{6/} The smallest organizational unit is the module; five or six modules form a section, an unspecified number of which make up a branch, the largest organizational unit. PSCs have, at most, two branches. Not all benefit authorizers would be performing SPIKE duties at the same time because each module within a section has 10 to 12 benefit authorizers but only 3 to 7 SPIKE positions.

^{7/} The Union's position is taken from information proffered to Ms. Hernandez during the informal conference.

from among other qualified employees. Management will give serious consideration to selection of these volunteers rejecting [] [them] only for the exigencies of the service.^{8/} If insufficient volunteers exist within the module having the [SPIKE] vacanc[ies], involuntary assignments will be made as follows: [(1)] First, qualified employees in the section will be selected who have not performed the SPIKE assignment. Such selection will be based on inverse seniority. [(2)] Then, qualified employees will be selected who have previously performed the SPIKE assignment. Employees who have been away from the SPIKE assignment the longest will be selected first. Ties will be broken by inverse seniority. [Emphasis added.]

Generally, seniority should be the "weighty factor" in the assignment of work when all else is equal. In this regard, this proposal benefits senior employees because it provides for a "bigger universe" from which the Employer may select employees for SPIKE position vacancies, whether voluntarily or involuntarily. Under the Employer's proposal, on the other hand, senior employees may be involuntarily assigned to SPIKE duties although there may be qualified junior employees in other modules who have volunteered to perform such duties, or vice versa. This is inconsistent with (1) the Employer's longstanding policy of selecting less senior employees for involuntary work assignments; and (2) the GLPSC MOA dated

^{8/} The Union indicated to Ms. Hernandez during the informal conference that it defines the phrase "exigency of the service" as does Black's Law Dictionary; but said phrase is not defined therein. The term "exigency," however, is defined in Black's Law Dictionary 514 (5th ed. 1979) as follows:

Demand, want, need, imperativeness. Something arising suddenly out of the current of events; any event or occasional combination of circumstances, calling for immediate action or remedy; a pressing necessity; a sudden and unexpected happening or an unforeseen occurrence or condition. ... State of being urgent or exigent; pressing need or demand; also case requiring immediate attention, assistance, or remedy; critical period or condition, pressing necessity.

January 31, 1990.^{9/} Finally, while some movement of employees between modules within a section may be necessary to assign a volunteer or a junior employee involuntarily to a SPIKE position vacancy, disruptions to the Employer's operations would be minimal because SPIKE assignments are made but once a year.

2. The Employer's Position

The Employer proposes the following:

When assigning employees to handle SPIKE duties within a module, [m]anagement will solicit volunteers from among all qualified employees within that module. If there are more than enough volunteers, selection will be made by seniority. Prior to making involuntary assignments in a module, management will solicit qualified volunteers for reassignment from within the module's section. Management will select from among those qualified volunteers absent a **legitimate staffing need**. The parties agree that, for the purpose of this MOU[,], a legitimate staffing need involves more than the mere inconvenience of relocating an employee. Rather, the management determination that a volunteer will not be reassigned must be based on **bona fide business reasons**. At the local level, upon request[,], the Union will be provided with a list of volunteers who were not reassigned. Whe[n] involuntary assignments are necessary in a module, selection will be based on prior SPIKE experience. Whe[n] there are qualified employees within the module that do not have any prior SPIKE experience, management will select from among[] those employees on the basis of inverse seniority. If all of the qualified employees within the module have SPIKE experience, management will select the employee(s) who ha[s] been away from SPIKE assignment

9/ Section 4B of the GLPSC MOA provides:

When assigning [b]enefit [a]uthorizers to handle SPIKE duties, [m]anagement will first solicit volunteers from among qualified GLPSC employees within the module having the vacancy, then from within the [s]ection, and then, if necessary, from among other qualified GLPSC employees.

the longest. All ties will be broken based on inverse seniority. [Emphasis added.]

The Employer agrees that the assignment of employees to SPIKE position vacancies primarily should be on a voluntary basis. It is, therefore, willing to go outside the module with the SPIKE position vacancy to place a volunteer and to undertake the "counterbalancing move of personnel from the module receiving the volunteer to the losing module," but only so long as it does not "run[] afoul of [] legitimate business need[s]." Selection of volunteers from outside the modules with SPIKE position vacancies would not be mandatory, but rather depend upon those needs. In this regard, management would have a "bona fide business reason" for not selecting specific volunteers from outside those modules if it determines that doing so would, for example, cause a deterioration of the needed "staffing mix," that is, the balance of skills, knowledge, and abilities among employees in the volunteers' modules or the modules with the SPIKE position vacancies. The Union may not interfere with the Employer's right to determine the "staffing mix" of each module.^{10/}

The Employer is willing to move employees from one module to another in a section to "maximize the use of volunteers" for SPIKE assignments, but not to "effectuate involuntary selections on the basis of seniority" so that most senior employees may avoid such assignments. Its interest in (1) avoiding the unnecessary movement of employees between modules and (2) "promoting SPIKE dut[ies] as [] regular and permanent dut[ies] of the [] [benefit authorizer] position" outweighs senior employees' interest in avoiding assignment to SPIKE duties now required under their position descriptions. Also, it would be inequitable and inconsistent with the position descriptions for benefit authorizers to have junior employees repeatedly performing SPIKE duties when there may be senior

^{10/} In support of this position, the Employer cites to the Federal Labor Relations Authority's decision in Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and American Federation of Government Employees, AFL-CIO, 21 FLRA 735 (1986), where the Authority upheld the Administrative Law Judge's finding that the employer had not committed an unfair labor practice when it refused to bargain over the union's proposal requiring the selection of employees for identical positions in different buildings strictly on preference and seniority because that proposal was outside the duty to bargain.

employees who never have performed such duties, which could occur under the Union's proposed involuntary selection procedure.

CONCLUSIONS

Having considered the arguments presented, we conclude that the parties should adopt the Employer's proposal to resolve the impasse. In our view, the Employer's proposed SPIKE assignment procedure balances appropriately the interest of employees that SPIKE assignments be determined primarily on a voluntary and seniority basis against the interest of the Employer in (1) deciding where employees' individual abilities, skills, and job-related traits are most needed so as to maintain the efficiency of its public service operations; and (2) ensuring that involuntary SPIKE assignments are fairly and equitably distributed among all qualified employees. A similar balance is lacking in the Union's proposed procedure where the focus, essentially, is on more senior employees being able to circumvent involuntary assignment to SPIKE positions.

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

April 9, 1992
Washington, D.C.