United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF THE NAVY NAVY RESALE AND SERVICES SUPPORT OFFICE NAVY EXCHANGE SERVICE CENTER AUBURN, WASHINGTON and LOCAL 2600, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	)	Case No. 91 FSIP 182

FACTFINDER'S REPORT

Local 2600, American Federation of Government Employees, AFL-CIO (Union) filed a request 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 Navy, Navy Resale and Services Support Office, Navy Exchange Service Center, Auburn, Washington (Employer or Auburn Service Center). The undersigned was designated by the Panel to conduct a factfinding hearing on the issue of wage rates for Administrative Support (AS) employees. The parties also were notified that the report of the factfinder, without recommendations for settlement, would be submitted to the Panel in accordance with section 2471.9(c) of the Panel's regulations (FF. Exh. 3). The hearing was held on September 24, 1991, in Auburn, Washington. A stenographic record was made, testimony and arguments were presented, and documentary evidence was submitted. Following the hearing, the parties submitted additional evidence and filed posthearing briefs; the record is now closed.

BACKGROUND

The instant impasse involves employees of the Navy Resale System which consists of nonappropriated-fund instrumentalities (NAFI) of the Department of the Navy. As the name implies,

NAFI activities are not directly funded by Congressional appropriations. The NAFI system is agencywide in scope and is designed, among other things, to provide or assist other Navy organizations in providing morale, welfare, and recreational (MWR) programs for military personnel and authorized civilians (Jt. Exh. 5 at I-3, I-4).

NAFI employees are excepted generally from the competitive service, and are governed, instead, by separate laws and regulations. The NAFI system employs the following types of workers: Crafts and Trades (CT) workers (such as cooks, electricians, janitors, plumbers, and warehousemen); Patron Service (PS) employees (such as cashier-checkers, customer service clerks, sales clerks, and ticket sellers); Administrative Support (AS) employees (such as receptionists, secretaries, and audit, file, or payroll clerks); and Universal Annual (UA) employees (such as budget administrators, equipment specialists, librarians, and recreation specialists) (FF. Exh. 2 at 1). The CT, PS, and AS workers are paid an hourly rate, while UA personnel are paid an annual salary (Tr. 18).

The Navy Resale System employs approximately 16,000 employees at 73 separate locations worldwide (FF. Exh. 2 at 1). The Auburn Service Center provides merchandise and administrative support to Navy exchanges in Washington, Alaska, and the Pacific region (Tr. 69). The bargaining unit consists of approximately 115 CT employees, 1 PS employee, approximately 75 AS employees, and 7 UA employees (FF. Exh. 2 at 3) who are represented by the Union.

Under the Prevailing Rate Systems Act, Pub. L. No. 92-392, 86 Stat. 564 (1972) (codified as amended at 5 U.S.C. §§ 5341-49 (1988)), (Act) Congress established a system for determining the pay of trade, craft, or laboring occupations based on prevailing wage rates in designated wage areas (Jt. Exh. 2). The intent of the law is to pay employees in Federal blue-collar occupations rates of pay comparable to the rates paid to employees working in similar occupations in the same local wage area. By its terms, the law sets forth a comprehensive plan for determining wage rates in local wage areas and requires Federal employers to apply the prevailing rate to those employees covered by the Act.

Beginning in 1978, however, and continuing to the present, Congress, in enacting appropriations legislation (which was subsequently signed into law by the President), has each year amended the Act to limit wage increases for prevailing rate employees to the same percentage awarded to General Schedule (GS) employees. This cap was continued for fiscal year 1992 by wording found in the Treasury, Postal Service, and General

Government Appropriations Act of 1992.1/ It appears to be uncontroverted that each year, the gap between wage rates paid to Federal blue-collar employees and rates paid to employees in similar occupations in the same wage area has grown increasingly larger.

Because wages of prevailing rate employees are specifically provided for by the Act, this subject is excluded, by section 7103(a)(14) of the Federal Service Labor-Management Relations Statute, from "conditions of employment" which may be negotiated. Accordingly, wage proposals made on behalf of prevailing rate employees would clearly be outside the duty to bargain.

As indicated above, the Act applies only to trade, craft, or laboring occupations; thus, in the NAFI system, it applies only to CT employees. Following adoption of the Act, however, the Department of Defense (DOD) administratively extended the relevant prevailing rate principles of the Act to the remaining NAFI workers who are paid at an hourly rate.2/ Accordingly, by administrative regulation, AS and PS employees were treated, for all intents and purposes, as prevailing rate employees. Consistent with this policy, annual wage increases for these employees were also capped at the percentage increase awarded to GS employees (Jt. Exh. 8). It should also be noted that the above-referenced DOD regulation has, in the past, operated as a bar to negotiations over wages for AS and PS employees.3/

In May 1990, the U.S. Supreme Court decided Fort Stewart Schools v. Federal Labor Relations Authority, ___ U.S. ___, 110 S. Ct. 2043 (1990). In that case, the Court held, inter alia, that since the wages of the civilian teachers involved in the case were not set by any statute, Congress did not preempt negotiations over them. Accordingly, the Court affirmed a ruling by the United States Court of Appeals for the Eleventh

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1/ Pub. L. No. 102-141, §616, 105 Stat. 834, 870 (October 28, 1991).

2/ Department of Defense Directive 5120.42 "Department of Defense Wage Fixing Authority - Nonappropriated Fund Compensation Programs" (May 19, 1977).

3/ See, e.g., American Federation of Government Employees, Local 1778 and McGuire Air Force Base, New Jersey, 6 FLRC 136 (1978).

Circuit[4] which enforced an earlier Federal Labor Relations Authority (FLRA) decision[5] that wage proposals made on behalf of the teachers are within the duty to bargain. Although the FLRA has not examined the issue of wage bargaining for NAFI employees in light of Fort Stewart, the Employer concedes that a bargaining obligation exists with respect to wages for AS employees (FF. Exh. 2 at 5).

The parties' current collective-bargaining agreement became effective on January 9, 1990, and will run for a 3-year period. This dispute is before the Panel following negotiations which were entered into pursuant to Article XXIV of the contract; that article requires the Employer to bargain "if wages are found negotiable by the U.S. Supreme Court" (Jt. Exh. 1).

ISSUE AT IMPASSE

The sole issue at impasse concerns what the wage rates for AS employees should be. Currently, the capped Step 2 hourly wage rates for AS employees are as follows:

AS-1	5.36
AS-2	5.85
AS-3	6.33
AS-4	6.75
AS-5	7.03
AS-6	7.31
AS-7	7.59
	(Jt. Exh. 9)

1. The Union's Position

The Union proposes the following:

To the extent as permitted by law, all bargaining-unit employees in Administrative [Support] positions will be paid, effective January 9, 1990, at the most recent unrestricted rate in the King County, Washington, area developed under local wage surveys conducted in accordance with applicable law and this agreement.

4/ Fort Stewart Schools v. Federal Labor Relations Authority, 860 F.2d 396 (11th Cir. 1988).

5/ Fort Stewart (Georgia) Association of Educators and Fort Stewart Schools, 28 FLRA 547 (1987).

Effective January 9 through December 31, 1990, all bargaining unit employees in the Administrative [Support] positions will be paid the following:

Position	Pay Rate
AS-1	5.45
AS-2	6.24
AS-3	7.04
AS-4	7.83
AS-5	8.63
AS-6	9.42
AS-7	10.22
AS-8	11.01
AS-9	11.80
AS-10	12.60 6/

For calendar year[s] 1991 and 1992, the rate of pay shall be the most recent unrestricted rates developed under local wage surveys conducted in accordance with applicable law (FF. Exh. 1 at 1; FF. Exh. 7). 7/

6/ The Union's proposal had originally contained the following provision:

> Plus a fourteen (14) percent pay lag rate shall be added to each of the above rates for the calendar year 1990.

That portion of the Union's proposal was withdrawn midway through the factfinding hearing (Tr. 108-114).

7/ Prevailing wage rate surveys are required by 5 U.S.C. §5343 (1988); OPM regulations which set forth survey procedures are found at 5 C.F.R. Part 532, Subpart B (1991). The most recent (as of December 17, 1990) unadjusted Step 2 hourly rates for AS employees are as follows:

AS-1	5.94
AS-2	6.52
AS-3	7.14
AS-4	7.83
AS-5	8.58
AS-6	9.41
AS-7	10.31

(FF. Exh. 1 at Attachment 2)

In its pre-hearing brief, the Union maintains that on a national basis, the pay lag between NAFI wage rates and prevailing rates ranges between 0 and 20 percent (FF. Exh. 1 at 2). It alleges that (1) current wage rates for AS employees at Auburn are inadequate and (2) wages for these employees lag a full 20 percent behind those paid to employees who work in similar occupations in the King County, Washington, area (FF. Exh. 1 at 2). According to the Union, because wages for AS employees are below the prevailing rate, the average AS employee in Auburn earned only $14,258 in 1990; this is $7,104 less than "a minimally adequate living wage."8/ Because many AS employees are not employed on a full-time basis, they are not eligible for Employer-sponsored health insurance or other fringe benefits (FF. Exh. 1 at 2). Thus, the Union argues, these employees are required to stretch a small paycheck even farther in order to cover the basic necessities of life. The Union concludes that because the unit is composed of over 95 percent female employees, the overall effect of the low wage rates is to "perpetuate the compartmentalization of women in jobs at the lowest end of the economic ladder" (FF. Exh. 1 at 3). Testimony as to this type of economic hardship was presented by two single mothers (one at AS-5 and the other at AS-4) who indicated that given their current wages, they are unable to afford essentials such as rent and child care (Tr. 114-119).

In further support of its position, the Union argues that the "artificially imposed pay caps" have led to a high level of turnover at the Auburn facility (FF. Exh. 1 at 1). In this regard, the Union points to statistics which, according to its interpretation, reflect an annual turnover rate of 54.3 percent (FF. Exh. 1 at 1). It apparently believes that this is strong evidence that the existing wage rates are not adequate to retain employees at the service center.

8/ The Union, in its pre-hearing brief, cites the AFL-CIO Research Department as the source of this data. It also notes that this same information was formerly developed and maintained by the U.S. Department of Labor's Bureau of Labor Statistics (FF. Exh. 1 at 3-4).

It is stated by the Union that the exchanges which Auburn services are highly profitable operations and that the Employer, therefore, can afford to pay prevailing wage rates. The Union points to the economic data furnished by the Employer which indicates that the Auburn region's actual sales for fiscal year (FY) 1990 were $314,253 higher than projected (Un. Br. 4). In its view, since the annual cost of the Union's proposal is only $235,083, the Employer should be able to pay higher wage rates and still remain profitable (Un. Br. 4).

The Union also contends, contrary to the Employer's allegations, that its proposal would not require any change in the number of employees at the facility, nor would it increase the number of paid hours (Un. Br. 2). Likewise, payment of prevailing rates would not, in its view, have any impact on the total cost of shift differential, the number of overtime hours required, or the accrual and/or use of annual leave (Un. Br. 3).

2. The Employer's Position

The Employer proposes maintenance of the status quo, i.e., that AS employees continue to be treated as prevailing rate employees and that any wage increase be limited to the same percentage awarded to GS employees (Emp. Exh. 7; Tr. 59).9/ The Employer maintains that there are no performance, productivity, or morale problems at the facility and that the Union has not demonstrated a need to change the existing rates (FF. Exh. 2 at 7). It contends that some AS employees live outside of King County where, according to the personnel manager, the cost of living is "lower than Seattle" (Tr. 47).

9/ Under the Federal Employees Pay Comparability Act of 1990, Pub. L. 101-509, Title V, 104 Stat. 1427 (1990) (Jt. Exh. 7), the pay rates for GS employees are increased each January based on changes in the Employment Cost Index as compiled by the U.S. Department of Labor's Bureau of Labor Statistics. Under this scheme, GS employees will receive a 4.2 percent increase in January 1992, and are tentatively scheduled to receive a 3.7 percent increase in January 1993.

It also states that recent Congressional action may lead to a phased-in lifting of the cap for all Prevailing Rate employees (Tr. 11)10/ and, therefore, the Panel would be out of step with Congress were it to adopt the Union's proposal at this time (Tr. 59). It also maintains that adoption of the Union's proposal would create an inequitable wage structure in the bargaining unit; in this regard, the Employer indicates that a large wage increase for AS employees would be unfair to CT employees whose wages would remain capped under the Act (FF. Exh. 2 at 7).

The personnel manager of the Auburn Service Center testified that in his view, there is no need to change the existing "uniform pay system" which has "been in place for 10 years" (Tr. 36, 37, 42, 51, 63, 64). He stated that there are

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10/ In the Senate Report which accompanies the Treasury, Postal Service, and General Government Appropriations Act of 1992 (which was enacted on October 28, 1991), the Office of Personnel Management (OPM) has been directed to:

> study the wage grade pay problem and prepare a report to the House and Senate Committees on Appropriations on how the problem should be addressed. This report, which is to be completed within 90 days of the enactment of this act, is to include an estimate of the cost of gradually phasing out the pay cap, beginning in fiscal year 1993. To begin this phaseout, the estimate for the fiscal year 1993 should assume that all Federal wage system wage areas with an average pay disparity of 6 percent or less shall be reduced in that survey cycle to zero disparity. S. Rep. No. 102-95, 102d Cong., 1st Sess. 90 (1991).

The parties also stipulated that there are two bills currently pending in Congress which, if enacted, would lift the pay cap for Prevailing Rate employees (Tr. 11-12). See S.310, 102nd Cong., 1st Sess., 137 CONG. REC. 1367 (1991); H.R.786, 102nd Cong., 1st Sess., 137 CONG. REC. 854 (1991).

very low turnover rates at two activities within the facility and that this can be interpreted as evidence that employees are satisfied with the existing wage rates (Tr. 22-29). Activity No. 130-992 (the "overseas van stuffing" operation) had zero turnover during the months of July and August 1991 (Tr. 23-24; Emp. Exh. 3). Activity No. 130-100 (the "white house of the Ad[ministration] Building") had the following monthly turnover rates for the first 8 months of 1991:

January	1.83 percent
February	2.68 percent
March	3.48 percent
April	1.77 percent
May	1.79 percent
June	1.74 percent
July	1.77 percent
August	8.77 percent
	(Tr. 25-26; Emp. Exh. 4)

The personnel manager also testified that the turnover rate of 54.3 percent, as set forth in the Union's pre-hearing brief, was apparently arrived at by taking a cumulative yearly separation total and dividing it into an average monthly "on-board" count (Tr. 27-28). The Employer's calculations, on the other hand, were arrived at by taking the monthly separation total and dividing it into the average monthly "on-board" count (Tr. 27-28). The same witness testified that the Employer does not have any difficulty filling vacancies (Tr. 28) and that to his knowledge, no employee has specifically indicated, during an exit interview, that he or she was leaving the Auburn Service Center for a better paying job (Tr. 29, 49-50). On cross-examination, however, he indicated that it was possible that employees could have told the Employer that they were leaving for either "personal reasons" or "to accept another job" when, in fact, they were really leaving for a higher paying job (Tr. 50). The personnel manager further testified that he has never had to request special pay provisions from the DOD Wage Fixing Authority which are available to help overcome recruitment or retention problems at the installation (Tr. 37-38).

The Employer also maintains that it is unable to afford the cost of the Union's proposal. The personnel manager testified that in addition to the proposed increase in wage rates, there would be roll-up costs for those fringe benefits which are directly tied to wage rates (Tr. 34).11/ The Union's ultimate proposal, according to the Employer's calculations, would cost $251,741 for calendar year 1990; $302,361 for calendar year 1991; and $356,731 for calendar year 1992.12/ In percentage terms, the increase for calendar year 1990, to be applied retroactively if the Panel orders its adoption, would be 19 percent (Emp. Exh. 11(a)), and the Employer contends that the entire cost of the Union's proposal could destroy the MWR program for which the system was established (Tr. 40). The personnel manager commented that exchange profits are committed to MWR programs by a higher authority (Tr. 39) and indicated that, in his opinion, the Employer does not have the ability to pay a significant wage increase (Tr. 42).

The personnel manager also testified that the Auburn Service Center does not generate any income, but instead, relies on the exchanges in its region for financial support (Tr. 37). While the Employer does not deny that the exchanges are, in fact, profitable,13/ it maintains that a certain percentage of the profits must be committed to morale, welfare, and recreation programs, as this is why the NAFI system was

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11/ According to the Employer, roll-up costs include costs for such items as overtime, shift differential, annual leave, sick leave, holidays, breaks, and health insurance and pension contributions (Emp. Exh. 11(a)).

12/ The cost estimate for calendar years 1991 and 1992 is apparently based on the assumption that the prevailing rate in King County, Washington, will, in 1991, be 4.1 percent higher than the 1990 rate proposed by the Union and that the 1992 prevailing rate will be 4.2 percent higher than the 1991 rate (Emp. Exh. 11(a)).

13/ The Operating Statement for FY 1990 indicates that for that year, the exchanges in the Auburn Region generated profits of $6,450,721 and for FY 1989, the Region generated profits of $6,415,390 (Emp. Exh. 8). The Operating Statement for the first 7 months of 1991 indicates that during that

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established (Tr. 39, 42, 82).14/ Since support of these programs is the primary mission of the exchanges (Tr. 74), the Employer contends that failure to provide such support would jeopardize the continued operation of some exchanges (Tr. 40; Emp. Br. 4). The personnel manager stated that profits generated in calendar year 1990 have already been committed and that there is no money left over to pay a retroactive wage increase, should the Panel order it (Tr. 60-61); thus, any retroactive wage increase would have to be paid out of profits generated during subsequent years. He also stated without contravention that the AS workforce consists primarily of married women who are members of two-income families (Tr. 61-62).

The accounting officer of the Auburn Service Center testified that net profits for FY 1991 year to date were 36.3 percent below projections and 50.8 percent below the amount generated during the same period in the previous fiscal year (Tr. 85). She explained that Operation Desert Storm had a negative impact on sales because so many military personnel had been sent to the Middle East (Tr. 91). She also testified that during this same period, the general state of the economy has been bad, which has also contributed to the decline in sales (Tr. 91). According to this same witness, Sand Point Naval Station is scheduled to be closed in 2 years, and is now going through a period of downsizing (Tr. 86). Moreover, the exchange at Naval Air Station Adak is undergoing a major rehabilitation in order to make it "safe in case of any

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period, the Region generated profits of $1,449,687 (Emp. Exh. 9). The Employer also presented evidence which indicates that for the 12-month period ending in January 1991, exchanges in the Auburn Region had generated the following levels of profits which were available for distribution: NS Adak - $358,315; NSB Bangor - $697,313; Puget Sound NSYD - $635,530; NAS Whidbey Island - $1,443,898; NSA Seattle - $811,149 (Emp. Exh. 10(a)-(e)).

14/ During the 12-month period ending in January 1991, the exchanges in the Auburn Region committed the following percentages and amounts of profits to MWR programs: NS Adak - 66 percent or $236,488; NSB Bangor - 66 percent or $460,225; Puget Sound NSYD - 66 percent or $419,450; NAS Whidbey Island - 59 percent or $851,898; and NSA Seattle - 66 percent or $535,357 (Emp. Exh. 10(a)-(e)).

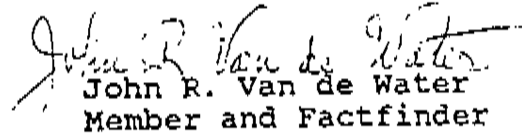
earthquakes," and, accordingly, is projected to barely break even (Tr. 86-87). She also testified that the drop in profits can be attributed, in part, to the fact that "a lot of equipment . . . has malfunctioned that we've had to go out and buy" (Tr. 91), and noted that as a general rule, a certain portion of profits is reinvested in "new buildings, . . . equipment, and stuff like this" (Tr. 82). The witness stated that the retail sales industry often has peaks and valleys and noted that any losses "have to be paid up before any profits can come out" (Tr. 89-90). She also stated that if a higher wage increase were ordered, she would have to factor the increase into the budget for that particular year (Tr. 94). She testified that the decision as to what percentage of profits is to be directed to MWR programs is made at the headquarters level (Tr. 96) and concluded that she does not believe that the exchanges in the Auburn Region will be able to meet their commitments to MWR programs because of the sharp decline in sales and profits (Tr. 95). In her opinion, if administrative costs become too high, it may be necessary to "just close the doors" of some exchanges (Tr. 87).

The executive officer of the Auburn Service Center testified that due to downsizing and consolidation within DOD, Service Centers in Mechanicsburg, Pennsylvania, and Davisville, Rhode Island, have been closed (Tr. 71). He also stated that a service center in Oakland, California, was due to close during the week following the hearing (Tr. 71). He indicated that the Auburn Service Center is the smallest of the remaining service centers, but that it has a very good reputation for efficiency (Tr. 72-73). The executive officer commented that MWR programs contribute a great deal to the quality of life of sailors and their dependents and that these types of programs are "a very big selling point" in efforts to recruit and retain military personnel (Tr. 75).

The section manager for Hard Lines and Consumables at the Auburn Service Center testified that the retail sales industry is becoming increasingly competitive and noted that two major retailers in the region had recently initiated bankruptcy proceedings (Tr. 102-103). The Soft Line section manager at the facility explained that the exchanges work very hard to remain competitive and are committed to selling merchandise at prices which are, on the average, 20 percent below those charged by private retailers (Tr. 105-107).

CONCLUSIONS

The above report, which summarizes the transcripts, exhibits, and posthearing briefs of the parties, is respectfully submitted to the Panel.


John R. Van de Water
Member and Factfinder

December 16, 1991
Anchorage, Alaska