

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 ADMINISTRATION)
FIELD OPERATIONS LOCALS,)
AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES, AFL-CIO)
)
)
)

Case No. 90 FSIP 197

DECISION AND ORDER

The National Council of Social Security Administration Field Operations Locals, 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 Health and Human Services, Social Security Administration, Baltimore, Maryland (Employer).

After the 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 issues at impasse concerning bilingual employees' utilization of their foreign language skills in case processing. 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 issues. After considering this information, the Panel would take whatever action it deemed appropriate to resolve the impasse, including the issuance of a binding decision.

The parties met with Ms. Hernandez on January 23 and 24, 1991, in Washington, D.C. With her assistance, agreement was reached on 10 of 12 issues in dispute; the remaining issues

concern (1) recognition of the effects bilingual duties may have on employees' workloads, and (2) incentive awards. Ms. Hernandez has reported to the Panel, and it has considered the entire record in the case.

BACKGROUND

The mission of the Employer is to administer the Old Age, Survivors, and Disability Insurance and the Supplemental Security Income programs for the general public. The Union represents approximately 20,000 General Schedule employees in clerical, technical, and administrative positions in 1,400 Social Security Administration (SSA) field offices nationwide, who are part of a consolidated bargaining unit of approximately 48,200 employees represented by the American Federation of Government Employees, AFL-CIO (AFGE). Employees are covered by a master collective-bargaining agreement (CBA) between the Employer and AFGE which is in effect until January 1993, as well as numerous memoranda of understanding and letters of agreement.

The dispute arose during negotiations over the Employer's proposed change in the position descriptions of certain field office employees in such positions as field, service, claims, and teleservice representative, receptionist, and claims clerk, which would require them to (1) possess foreign language skills, and (2) use those skills in service to the non-English-speaking public.

ISSUES AT IMPASSE

The parties are at impasse over (1) to what extent the performance of bilingual duties should be recognized for performance appraisal purposes, and (2) incentive awards for employees required to use their bilingual skills.

POSITIONS OF THE PARTIES

1. Bilingual Duties

a. The Employer's Position

The Employer proposes to "recognize[] that bilingual duties may involve additional time, effort, and result in case complexities." It is putting supervisors on notice that bilingual cases, that is, those where the claimants or annuitants speak a language other than English, may be more complex to handle and, therefore, may require employees to

spend additional time and effort in processing them. When a case is more time consuming or complex because of its bilingual aspect, supervisors would be required to consider such factors as beyond the employees' control when evaluating job performance under Article 21, section 3E., of the CBA.^{1/} Moreover, employees have garnered additional protection under a provision agreed to by the parties which recognizes that assignment of bilingual duties may add to employees' workloads.^{2/} It could not agree to the Union's "blanket" provision which would require it always to attribute the extra time, effort, or complexity of a case to its bilingual nature and then consider such factors as "beyond the control of the employee" assigned the case. Whether such factors are attributable to the bilingual nature of the case and thus "beyond the control of the employee," or to the unrelated actions of the employee, is for the supervisor to ascertain based upon the specific circumstances of the case.

b. The Union's Position

The Union proposes the following:

It is also recognized that bilingual duties often involve additional time, effort, and case complexities. When this occurs, it will be considered as beyond the control of the employee.

The proposal is an appropriate arrangement for employees adversely affected by the assignment of bilingual duties. Management, however, would retain the right to evaluate an employee's work performance in accordance with the CBA and merit principles. Under the current and preceding CBAs, the parties recognized that certain matters may occur which are beyond the control of employees, and agreed this should be taken into consideration when appraising employees' work performance. The CBAs provide that management may consider

1/ This contractual provision provides that "when rating employees or otherwise applying performance standards, the [E]mployer shall consider factors which affect performance that are beyond the control of the employee."

2/ The first sentence of part C.1. of the Memorandum of Understanding on Bilingual Position Descriptions states that "[t]he Employer recognizes that bilingual duties may represent an additional workload for affected employees."

uncontrollable matters related to processing bilingual cases when appraising employees' job performances, but the practice has been otherwise. In this regard, the Employer does not dispute that bilingual cases may be, by their very nature, more complex and require extra time and effort in processing. In the past, however, it has failed to consider these factors when evaluating the job performance of bilingual employees who volunteered to handle the cases of non-English-speaking clients. Consequently, these employees consistently have received lower performance evaluations than their colleagues handling the cases of English-speaking clients and have, therefore, not shared in the distribution of performance or incentive awards monies.^{3/}

If the CBA has not been followed in the past, it most likely would not be followed in the future. A specific "beyond the control of the employees" provision must be included in the memorandum of understanding on bilingual position descriptions if the Employer is to give consideration to the complexities of or the additional time and effort expended on the cases involving non-English-speaking clients. Such a provision is necessary "to ensure fair and equitable treatment on performance issues for bilingual employees."

CONCLUSIONS

Having considered the evidence and arguments on this matter, we shall order that the dispute be resolved on the basis of the Union's proposal. The evidence indicates that the Employer may not be fully considering the additional time and effort involved in processing the claims of non-English-speaking clients, or the inherent complexities of many of these claims, as factors outside the employees' control for performance evaluation purposes as required under Article 21, section 3E., of the CBA. We are persuaded that the Employer should consider, for performance appraisal purposes, these factors which, in some cases, may have an adverse impact upon employees' workloads. Only then would bilingual employees be on equal footing with their colleagues who service the English-speaking public only and, therefore, be better able to compete for awards. To do otherwise may foreclose these employees from performance-related or incentive awards. Furthermore, nothing in the wording of the provision should

^{3/} Office of Evaluation and Inspections, Office of the Inspector General, U.S. Department of Health and Human Services, Report No. OEI-02-89-00630, Servicing Non-English Speaking Clients (1990).

prevent the Employer from fully evaluating bilingual employees' performance to determine if they took appropriate actions in processing the claims of non-English-speaking clients.

2. Incentive Awards

a. The Union's Position

The Union proposes the following:

(1) On-the-Spot incentive awards of \$250 per bilingual employee shall be given annually beginning FY 92. The distribution of awards shall be completed within 90 days of the start of each FY. It is understood that these awards shall be reviewed and approved by management officials higher than the ones who recommended the awards. These awards are in addition to performance awards and Quality Step Increases and are not a substitute for other personnel actions or pay. Employees who have received disciplinary actions for discourtesy to the public may be denied these awards. (2) The Employer agrees to work with OPM in order to establish a bilingual awards program for the purpose of recognizing bilingual employees contributions to the mission of the Employer. (3) Upon completion of input from OPM, the Employer will inform the Union of the results. If the Employer then decides to terminate the On-the-Spot bilingual awards, the Union will be given notice and the opportunity to bargain in accordance with 5 U.S.C. chapter 71.

The proposal establishes a separate incentive cash awards program for recognizing employees who use their foreign language skills in service to the public; establishment of such special programs is encouraged by the Office of Personnel Management.^{4/} It is not intended as a separate pay system.

The time has come to recognize the contribution which, for many years, bilingual employees have selflessly made to the Employer's public service mission without monetary recompense. According to the Union, its proposal is consistent with 5 C.F.R. section 451-104(e), a Governmentwide regulation, which requires that recommendations for incentive awards be approved

^{4/} FPM Chapter 451, Subchapter 6-3.c.

by higher level officials. In this regard, higher level agency officials may deny awards for which bilingual employees have been recommended if they do not provide courteous service or meet language proficiency requirements. Moreover, it does not interfere with the Employer's right to determine its budget because the proposal neither prescribes the program nor the money for such program to be included in the Employer's budget, or requires a significant and unavoidable increase in cost to the Employer.

Furthermore, it is consistent with the Inspector General's recommendation that bilingual skills be emphasized in, among other areas, incentive awards programs.^{5/} The March 1990, report of the Joint Labor-Management Equal Employment Opportunity Monitoring Committee revealed that there is an imbalance in the distribution of awards, with hispanic and asian employees receiving fewer such awards than their nonhispanic and nonasian colleagues. Bilingual employees feel disadvantaged by virtue of their need to use their foreign language skills in an increasing number of cases. In the past, management has been unresponsive to the adverse effect which the extra work has had on these employees' job performance.

As to the Employer's claims that it has no money to establish a special incentive awards program for bilingual employees, the Union notes that it has given executives cash awards of \$7,500 and up.

b. The Employer's Position

The Employer proposes the following incentive awards program for bilingual employees:

(1) Cash awards, as part of the existing On-the-Spot (OTS) awards program, will be considered by management for employees whose accomplishment of bilingual duties merits a reward. (2) OTS [awards] will be used when a small amount of cash is appropriate, and immediate recognition is important. (3) OTS awards will range in amounts from \$50 to \$250. (4) The Employer agrees that bilingual employees will be considered for other incentive awards in accordance with Article 17 of the national [labor] agreement.

^{5/} OEI, supra note 2, at ii.

The current incentive awards program and the On-the-Spot cash awards program already cover bilingual employees.^{6/} Its proposal encourages use of these existing programs to recognize deserving bilingual employees. Establishment of separate programs for bilingual employees may create morale problems and cause resentment among other employees. Furthermore, modifications of the incentive awards program set out in the CBA are not appropriate for negotiations at the "national component level (level 2)," but rather, at the "national SSA level (level 1)."

Under the Union's proposal, all bilingual employees would receive \$250 unless they were "discourteous to the public." That proposal provides for additional mandatory pay and not incentive award monies as is envisioned by law. In this regard, it is a "back door" approach to getting these employees more pay, which is a matter properly accomplished through legislation. Moreover, because the \$250 payment is disbursed irrespective of the level of an employee's productivity, it would not provide an incentive to employees to perform at a higher level, which could result in an increase cost to the Employer without offsetting benefits. The cost of these indiscriminating payments may be substantial; the exact dollar figure would be hard to calculate given that the number of field office employees who would be affected is unknown; however, it could be as high as \$750,000. The agency cannot assume this cost due to its severe bugetary problems.^{7/}

CONCLUSIONS

We conclude that the parties should adopt the Employer's proposal that meritorious bilingual accomplishments in casework be recognized under existing incentive awards programs.^{8/} We

^{6/} Article 17, of the CBA and the Memorandum of Understanding on On-the-Spot cash awards dated January 8, 1990.

^{7/} Memorandum from Gwendolyn S. King, Commissioner of Social Security Administration, to Deputy Commissioner for Programs, et al. (January 2, 1991) (discussing the Social Security Administration's \$100 million-plus budget shortfall for fiscal year 1991).

^{8/} The proposal appears to be consistent with 5 C.F.R. section 451-104(e).

find no need to create a separate awards program when the means for rewarding the use of foreign language skills already exists. In our view, specific recognition of foreign language skills as eligible for awards should correct the historic oversight in rewarding bilingual work and ensure that available awards monies are equitably distributed to deserving employees. Moreover, it should tend to balance the interests of all employees while avoiding an adverse budgetary impact upon the Employer during a period of fiscal constraint.

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 the proceedings instituted under 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. Bilingual Duties

The parties shall adopt the Union's proposal.

2. Incentive Awards

The parties shall adopt the Employer's proposal.

By direction of the Panel.



Linda A. Lafferty
Executive Director

June 12, 1991
Washington, D.C.