

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

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In the Matter of )  
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DEPARTMENT OF THE TREASURY )  
INTERNAL REVENUE SERVICE )  
SEATTLE DISTRICT OFFICE )  
SEATTLE, WASHINGTON )  
 )  
and ) Case No. 90 FSIP 164  
 )  
 )  
CHAPTER 30, NATIONAL TREASURY )  
EMPLOYEES UNION )  
 )  
\_\_\_\_\_ )

DECISION AND ORDER

Chapter 30, National Treasury Employees Union (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 Treasury, Internal Revenue Service, Seattle District Office, Seattle, Washington (Employer or IRS).

The Panel determined that the impasse concerning smoking policy should be resolved through written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the impasse. Written submissions were made pursuant to this procedure, and the Panel has now considered the entire record.

BACKGROUND

The Employer's mission is to administer the Federal tax laws and includes providing tax information to the public, examining tax returns, and collecting revenue. The nationwide consolidated bargaining unit consists of approximately 60,000 employees, of which approximately 650 are located in the Seattle District Office. Representative job classifications include tax auditor, revenue officer, revenue agent, taxpayer service representative, budget analyst, clerk, and secretary. The parties are covered by a master collective-bargaining agreement (NORD III) which is due to expire in June 1994.

ISSUES AT IMPASSE

The instant impasse arose as a result of local negotiations over a smoking policy for the space occupied by the Employer in the Jackson Federal Building in Seattle, Washington. The parties' final offers reflect the fact that they are in agreement on some aspects of the smoking policy.

1. The Union's Position

The Union proposes that smoking be prohibited in all Employer-controlled space in the building with the exception of two designated-smoking areas on the 20th and 23rd floors. Under its proposal, the Employer would construct separate ventilation systems for the proposed smoking areas by tapping into the rest room ventilation systems on those floors, thereby exhausting environmental tobacco smoke (ETS) directly to the outside. The Employer would also be required to supply air purifiers for the smoking areas and provide smoking cessation classes at least once per year.

Its proposal balances the competing interests of smokers and nonsmokers. Under GSA regulations, <sup>1/</sup> employers are required to provide designated-smoking areas to accommodate the needs of employees who smoke. By creating smoking areas which vent to the outside, the Employer could fulfill its obligation under the regulations while at the same time protecting the health of nonsmokers. This is consistent with recent Panel decisions in which indoor smoking was permitted in certain designated areas.<sup>2/</sup> Moreover, providing for the needs of smokers may result in productivity gains; in this regard, the Union's proposed designated areas are closer to the workstations of some smokers than are the areas proposed by the Employer. Finally, requiring the Employer to provide regular smoking cessation programs may help some smokers break the habit.

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<sup>1/</sup> See 41 C.F.R. §101-20.105-3 (1990).

<sup>2/</sup> See United States International Trade Commission, Washington, D.C. and Local 2211, American Federation of Government Employees, AFL-CIO, Case No. 90 FSIP 81 (November 20, 1990), Panel Release No. 302; United States Federal Trade Commission, Washington, D.C. and Local 2211, American Federation of Government Employees, AFL-CIO, Case No. 90 FSIP 86 (November 20, 1990), Panel Release No. 302.

On the other hand, the Employer's proposal does not provide adequately for the needs of smokers. It is inconsistent with existing GSA regulations<sup>3/</sup> and would likely have a negative impact on both the morale and productivity of smokers by "banishing" them to segregated areas of the employee cafeteria and unsheltered outside areas. None of the areas proposed by the Employer are large enough to accommodate all of the smokers at the agency, and the proposed outdoor areas would not protect smokers from the harsh weather conditions which occur frequently in Seattle. Finally, requiring employees to smoke in unprotected outdoor areas is inconsistent with prior Panel decisions<sup>4/</sup> which require that smokers be afforded protection from inclement weather.

## 2. The Employer's Position

The Employer proposes that smoking be prohibited "in all IRS work areas including general office space, private offices, public contact areas, conference rooms, training rooms, libraries, and storage space." Under its plan, smoking would also be prohibited in all rest rooms and hallways which are under the Employer's control. To accommodate the needs of smokers, "smoking would be allowed in the second floor employee cafeteria, the third floor loading dock area, or outside under the overhangs on the first and fourth floor entrances." The Employer would provide smoking cessation programs "at least one time per year provided there is sufficient interest," and the smoking "agreement" could be reopened by mutual consent.

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3/ See note 1.

4/ See Department of Veterans Affairs, Veterans Health Services and Research Administration, Washington, D.C. and National VA Council, American Federation of Government Employees, AFL-CIO, Case No. 89 FSIP 198 (April 27, 1990), Panel Release No. 294; Department of the Air Force, MacDill Air Force Base, MacDill AFB, Florida and Local 153, National Federation of Federal Employees, Case No. 90 FSIP 58 (April 27, 1990), Panel Release No. 294; Department of the Air Force, Griffiss Air Force Base, Griffiss Air Force Base, New York and Local 2612, American Federation of Government Employees, AFL-CIO, Case No. 89 FSIP 214 (January 24, 1990), Panel Release No. 290.

Its proposal is preferable because it minimizes the health risks to all employees while accommodating the needs of smokers. In this regard, it is consistent with prior Panel decisions<sup>5/</sup> in which smoking was banned in the workplace with reasonable accommodation made to allow employees to smoke in outside areas. Since the proposed outside designated-smoking areas are covered by overhangs, smokers should be protected from inclement weather while the provision allowing for smoking in the employee cafeteria would accommodate those who do not wish to leave the building. All proposed smoking areas would be easily accessible by elevator, and the policy would be consistent with the majority of agencies in the building. While the Employer agrees to provide smoking cessation programs, a showing of "sufficient employee interest" is a reasonable prerequisite. The reopener provision in its proposal would allow the parties to reassess the issue at a later date should any problems persist.

In contrast, the Union's proposal is simply not feasible in the current economic climate. By the Union's own estimate, construction costs for the two proposed smoking areas would be between \$6,000 and \$16,000 per room while estimates obtained by the Employer place the total construction cost in the \$50,000 to \$80,000 range. Moreover, the cost of office space to replace those rooms converted to smoking lounges would be approximately \$13,000 per year. The Employer points out that the building's design is such that outside ventilation of smoking lounges is impractical. Even if the rooms could easily be vented to the outside, second-hand smoke may leak into adjoining corridors and offices. Indoor smoking areas also would create an increased health risk for smokers as they would be exposed to higher concentrations of second-hand smoke; in this regard, the Employer notes that the proposed lounges may not be large enough to accommodate the number of smokers at the agency. Furthermore, the Union's proposal may have a negative impact on productivity as the proposed lounges are farther from some employees' work stations than are those proposed by the Employer. Finally, the Union's proposal is inconsistent with the smoking policies of most other agencies in the building.

#### CONCLUSIONS

Having considered the evidence and arguments in this case, we conclude that the impasse should be resolved on the basis of the Employer's proposal. It strikes a more reasonable balance in the incremental approach to achieving a smoke-free workplace. In this regard, we are not convinced that the

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<sup>5/</sup> See Veterans Affairs and MacDill at note 4.

Union's proposal would as adequately protect the health of nonsmokers. Even though the proposed smoking lounges would be vented to the outside, seepage of second-hand smoke into adjoining corridors and offices would likely occur. Moreover, given the overall price tag, we conclude that its adoption would place an unreasonable financial burden on the Employer during a period where fiscal restraint is essential.

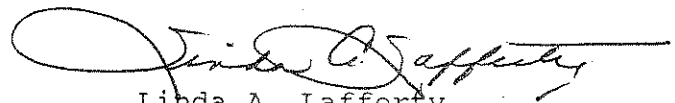
By allowing smoking only in the employee cafeteria and designated outdoor areas, the Employer's plan should protect the health of all employees while accommodating the needs of smokers. In this regard, we note that the proposed outside designated-smoking areas are covered by overhangs, which should provide smokers shelter during inclement weather; moreover, that portion of the Employer's plan allowing for smoking in the cafeteria should accommodate those who do not wish to leave the building. With respect to smoking cessation programs, while such programs are often effective in helping smokers to break the habit, a showing of "sufficient employee interest" is a reasonable prerequisite to their being offered to bargaining-unit employees. Finally, a reopener provision should serve as a practical mechanism for addressing any future disputes which may arise over smoking policy.

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:

The parties shall adopt the Employer's proposal.

By direction of the Panel.



Linda A. Lafferty  
Executive Director

March 27, 1991  
Washington, D.C.