

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

DEPARTMENT OF THE NAVY)
U.S. NAVAL ORDNANCE STATION)
LOUISVILLE, KENTUCKY)

and)

Case No. 90 FSIP 222

LOCAL LODGE 830, INTERNATIONAL)
ASSOCIATION OF MACHINISTS)
AND AEROSPACE WORKERS,)
AFL-CIO)
_____)

DECISION AND ORDER

Local Lodge 830, International Association of Machinists and Aerospace Workers, 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 Navy, U.S. Naval Ordnance Station, Louisville, Kentucky (Employer).

The Panel determined that the impasse should be resolved pursuant to written submissions from the parties with the Panel to take whatever action it deemed appropriate to resolve the impasse concerning a smoking policy. Submissions were made pursuant to these procedures and the Panel now has considered the entire record.

BACKGROUND

The Employer is responsible for overhauling naval ordnance equipment. The Union represents approximately 2,000 General Schedule and Wage Grade employees who occupy clerical, and trades and crafts positions. The parties recently entered into a 3-year collective-bargaining agreement which is in effect until June 1993. The contract was implemented although the parties were unable to reach agreement over a smoking policy.

ISSUE AT IMPASSE

The parties are at impasse over: (1) the designation of smoking areas, and (2) whether specific smoking breaks should be assigned to employees who abuse smoking privileges.

I. Designated-Smoking Areas

a. The Employer's Position

The Employer proposes that smoking be permitted in (1) designated-smoking areas; (2) open-shop areas where ventilation is adequate; (3) private offices with the consent of the occupant; (4) second-floor restrooms in multi-floor buildings; and (5) hallways, corridors, and stairwells, except on the first floor of the Administration Building.

The Employer maintains that restricting smoking to designated areas would eliminate it in common and shared areas and lessen nonsmokers' exposure to environmental tobacco smoke. Moreover, the restrooms, stairwells, and hallways designated as smoking areas all would be conveniently located near employee work areas. Since the second-floor restrooms are removed from the common work areas, allowing smoking there would provide smokers and nonsmokers a choice of separate facilities. In order to reduce the impact of environmental tobacco smoke in the restrooms designated for smoking, the Employer would install smoker-eaters.

According to the Employer, the first floor of the Administration Building is traveled frequently by visitors and employees. A prohibition on smoking in this area would be consistent with Department of Defense (DOD) policy which recognizes the right of individuals who work in or visit DOD-occupied buildings to an environment reasonably free from contaminants.^{1/} Contrary to the Union's contentions, Conference Room 110 should not be designated as a smoking area because it is utilized daily by the Personnel Office for conducting interviews and presenting performance evaluations.

b. The Union's Position

The Union proposes that smoking at will be allowed to continue, except when nonsmoking employees object. At such time as an employee makes a formal complaint, suitable arrangements

^{1/} See Department of Defense Directive 1010.10, (March 11, 1986).

could be made to segregate smokers from nonsmokers. Additionally, it proposes that Conference Room 110 located in the Administration Building, be designated as a smoking area with appropriate ventilation equipment to be installed there.

The Union essentially argues that its proposal strikes the appropriate balance between smokers and nonsmokers. Segregation of smokers would require neither additional space nor costly alterations; nor would the efficiency of work units be impaired. Solutions to problems could be fashioned by mutual agreement as they arise; improved ventilation should overcome most problems expressed by complaining employees. Finally, the advantage of designating Conference Room 110 as a smoking area, even though it is now utilized for certain personnel functions, is that it would eliminate the need for first floor smokers to go elsewhere to smoke.

CONCLUSIONS

Having considered the evidence and arguments in this case, we conclude that the parties' dispute over designated-smoking areas should be resolved by the adoption of a modified version of the Employer's proposal. Although we view the Employer's proposal as an incremental approach to establishing a smoke-free workplace, allowing smoking in hallways, corridors, and stairwells contravenes the goals espoused in the Surgeon General's Report; that is, that employees be provided with a healthy work environment, free from the contaminants of second-hand tobacco smoke.^{2/} Specifically, the likelihood of nonsmokers' exposure to the hazards of second-hand or "drifting" smoke emitting from these areas would be great.

Furthermore, there is no evidence to substantiate that private offices are better ventilated than common or shared work areas. Continuing to allow smoking by employees who occupy private offices, while restricting it among those who do not, may be perceived as affording more favorable treatment to certain employees, and has the potential for creating morale problems. Moreover, nonsmoking employees would occasionally be required to enter private offices to work, thereby subjecting them to hazardous passive smoke. We have determined in previous decisions that there should be no smoking whatsoever in any area where employees may be assigned or sent as part of their

^{2/} The Health Consequences of Involuntary Smoke, A Report of the Surgeon General, DHHS Pub. No. (CDC) 87-8398, U.S. Department of Health and Human Services, Public Health Services, Centers for Disease Control, Center for Health Promotion and Education, Office of Smoking and Health, 1986.

regular duties.^{3/} These conclusions were reached on the basis that allowing smoking in offices would appear to be too casual an approach given the mounting scientific evidence of the adverse effects of sidestream smoke on the health of nonsmokers.^{4/} Therefore, we shall order that the Employer's proposal be modified to eliminate smoking in hallways, corridors, stairwells, and private offices. This approach should prove easier to administer than the Union's, which in large part, defers the difficult matter until such time as a nonsmoker speaks out in favor of a healthful working environment. That is too heavy a burden where the designated representatives of the parties have the responsibility to negotiate such solutions to workplace problems.

II. Assigned Breaks for Smokers

a. The Employer's Position

The Employer proposes that employees be permitted to smoke in designated-smoking areas at any time during duty hours; however, abuse of this privilege may result in an assignment of smoking breaks by supervisors. Recognizing the desire of employees to smoke at times other than only during established breaks, the Employer contends that it does not seek to prevent employees from doing so; rather, its goal is to prevent abuse. The potential for having breaks assigned should encourage employees not to take undue advantage of the liberal policy.

b. The Union's Position

The Union proposes to maintain the status quo; that is, to allow an unlimited number of smoking breaks with no restrictions. It contends that employees should not have assigned breaks under any circumstances.

CONCLUSIONS

We find the Employer's proposal to be more reasonable because breaks would only be assigned where abuse is found. In

^{3/} 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.

^{4/} See U.S. Environmental Protection Agency, "Indoor Air Facts No. 5, Environmental Tobacco Smoke," U.S. Environmental Protection Agency, Office of Air and Radiation, June 1989.

this regard, it should act as a preventive measure against abuse of the policy. The Union's proposal, on the other hand, lacks any measure of control over smokers who may fail to give due regard to the liberal break 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:

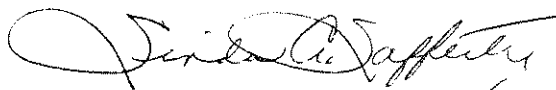
I. Designated-Smoking Areas

The parties shall adopt the Employer's proposal, modified to exclude those provisions which would allow smoking in hallways, stairwells, corridors, and private offices.

II. Assigned Breaks for Smokers

The parties shall adopt the Employer's proposal.

By direction of the Panel.



Linda A. Lafferty
Executive Director

March 15, 1991
Washington, D.C.