

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE NAVY
NAVAL AIR STATION JOINT
RESERVE BASE NEW ORLEANS
BELLE CHASSE, LOUISIANA

and

LOCAL 17, NATIONAL ASSOCIATION OF
INDEPENDENT LABOR

Case No. 13 FSIP 46

DECISION AND ORDER

Local 17, National Association of Independent Labor (NAIL or Union) filed a request for assistance with the Federal Service Impasses Panel (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 the Navy, Naval Air Station Joint Reserve Base New Orleans, Belle Chasse, Louisiana (NAS/JRB or Employer).

After investigation of the request for assistance, arising from the Employer's decision to terminate its practice of granting bargaining unit employees administrative leave on Mardi Gras day, February 12, 2013, the Panel determined to resolve the dispute through written submissions with rebuttals. The parties were advised that after receiving their submissions, the Panel would take whatever action it deemed appropriate to resolve the impasse, which may include the issuance of a binding decision.^{1/}

^{1/} In its procedural determination letter, dated February 11, 2013, the Panel also ordered the Employer "to grant administrative leave to all bargaining unit employees, if any, who were required to take annual leave by their supervisors because they were informed that the activities where they work will be closed on February 12, 2013." It took this unusual step, in accordance with the authority granted to the Panel by the Federal Labor Relations

Written submissions were made pursuant to the Panel's direction, and the Panel has now considered the entire record, including the parties' pre-jurisdictional statements of position.

BACKGROUND

The Employer's mission is "to provide the services that maintain the day-to-day functioning of the base and support the warfighter." Its services include security, fire protection, child care facilities, temporary housing, and recreation areas that support multiple tenant commands on the installation, including a fighter squadron and a Fleet Readiness Center (FRC) engaged in aircraft repair. The Union represents approximately 80 Wage Grade and General Schedule non-professional appropriated fund (AF) employees, and approximately 153 non-appropriated fund (NAF) non-professional employees. The AF employees are governed by a collective bargaining agreement (CBA) due to expire in July 2014; the NAF employees are governed by an interim agreement of indefinite duration that went into effect in May 2012 after the Union was certified by the FLRA as their exclusive representative in April 2012.

ISSUE

The parties essentially disagree over whether bargaining unit employees who were not required to work on February 12, 2013, should receive administrative leave.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes that "all bargaining unit employees not required to work Mardi Gras day, a local holiday, will be granted administrative leave for the day." While some employees historically have been required to work on Mardi Gras day, such as employees at the NAS/JRB Fuel Farm and those that provide security, the statements of the employees the Union has submitted confirm that granting administrative leave to a large majority of unit employees has been a long-standing past

Authority's (FLRA) in *U.S. Immigration and Naturalization Service and National Border Patrol Council, American Federation of Government Employees, AFL-CIO*, 55 FLRA 69 (January 12, 1999), on the basis of uncontroverted evidence provided by the Union during the initial investigation of the request for assistance.

practice at the installation. This practice "should not be changed" for a number of reasons. Civilian employees are in positions that provide support to the military and the mission. The military, however, is granted liberty from Saturday through Tuesday (Mardi Gras day). With the military on liberty, "there is no one to provide support to, and essentially little meaningful work that can or is required to be accomplished," a fact established by the Employer's "willingness to grant liberal leave to civilian employees and then claim facilities are closed due to civilians being on leave." Thus, "with the military on liberty and the civilians all granted liberal leave then for all purposes the base is not open for normal operations or business as usual." This is supported by the experience of the Union's Secretary, who went to the NAS/JRB on Mardi Gras day and "found facilities closed, roads without traffic and empty parking lots," and by signs posted throughout the base, including the Fitness Center, that all Morale, Welfare and Recreation (MWR) facilities "will be closed" on Mardi Gras day.

There is additional evidence that NAS/JRB is officially closed on Mardi Gras day and, therefore, the practice of granting administrative leave should be continued. The MWR Department Child and Youth Program (CYP) Handbook states that Mardi Gras day is a local holiday and that "CYP are closed on Mardi Gras day." Moreover, newly-hired employees are told during orientation that "Mardi Gras day is a local holiday in which they are off." Failure to continue to grant employees administrative leave under such circumstances "deteriorates their morale and drives a wedge between the military and civilians," particularly in light of several years of pay freezes and pending issues of sequestration and looming funding cuts. The Employer's argument that parades and parade routes are not in close proximity to NAS/JRB "are immaterial to the fact that Mardi Gras day is a local holiday" where city and state offices and schools are closed. Bargaining unit employees live throughout the region and could be impacted by parades and party goers, and they have school age children affected by school closures. Denying unit employees the local holiday they have enjoyed in the past while the military and others in the region are receiving the day off "is unconscionable."

Finally, as to the Employer's jurisdictional argument that continuing to grant unit employees administrative leave on Mardi Gras day interferes with management's rights to assign work and to determine the personnel by which Agency operations will be conducted, the Union's proposal "does not affect any of these rights." In this regard, the entire matter was brought to the

Union's attention after it was informed by a number of employees that their supervisors were requiring them to take annual leave on Tuesday, February 12, because their places of work would be closing that day. This is substantiated by the signed statements of four employees who work at the Child Development Center, the NAS/JRB Fuel Farm, and the FRC, respectively. In addition to the postings indicating that all MRW facilities will be closed on Mardi Gras day, this evidence makes clear that "base operations for Mardi Gras day are no different this year than previous years." Thus, the decision to curtail certain operations was driven by the fact that military personnel, whose needs the civilian bargaining unit employees are there to service, were granted liberty for 96 hours from Saturday, February 9, through Tuesday, February 12. In its view, "the Agency is attempting to have the Panel believe that management exercised its management right to not close the facility and to conduct normal business operations on Mardi Gras day . . . But as addressed above, functions throughout the facility are closed."

2. The Employer's Position

The following is the Employer's proposal:

Naval Air Station Joint Reserve Base New Orleans will remain open on Mardi Gras day and all employees may report to work as normally scheduled. No employees will be required to take their personal leave on Mardi Gras day. Except where essential services and mission requirements must be met, a liberal leave policy will be in effect for Mardi Gras day. In addition, employees on a compressed work schedule may elect to change their regular day off to Mardi Gras day or the Monday before Mardi Gras day during the pay period at issue.

As a preliminary matter, the Union's proposal to continue the *status quo* is outside management's duty to bargain because: (1) the matter of administrative leave for Mardi Gras day is covered by Article 27 of the AF CBA, specifically Section 3, which states: "Employees MAY be granted excused absences for other purposes in accordance with regulations" (emphasis added); and (2) it exceeds the scope of impact-and-implementation bargaining. With respect to the latter claim, while conceding that a union proposal to grant administrative leave, rather than require employees to take annual leave, is negotiable when a

decision is made to close an activity,^{2/} "in the instant case, the exact opposite situation exists." That is, "in 2013 NAS/JRB New Orleans exercised its management right not to close the facility and to conduct normal business operations on Mardi Gras day." Accordingly, the Union's proposal interferes with management's rights to determine the mission of the Agency, under § 7106(a)(1), and to assign work and determine the personnel by which Agency operations will be conducted, under § 7106(a)(2)(B) of the Statute. To the extent that the Union's proposal would establish an additional holiday for employees, the FLRA has ruled that Federal holidays are specifically provided for in 5 U.S.C. 6103 and, therefore, the matter does not concern a negotiable condition of employment.^{3/}

On the merits of the issue, the Employer's proposal essentially preserves management's right to determine its mission by keeping the NAS/JRB open on Mardi Gras day for all employees who do not volunteer to take annual leave. Although there has been a past practice of granting non-essential employees administrative leave on Mardi Gras day, it is no longer justified given the changes that have occurred since 2011, when the Naval Support Activity, which was located approximately 5 miles from the main Mardi Gras activity in the French Quarter of New Orleans, was closed due to a Base Realignment and Closure Committee recommendation. As a result, the employees represented by the Union are now 14 miles south of New Orleans in Belle Chase, an area only minimally affected by Mardi Gras traffic and crowds, if at all. Furthermore, unit employees in tenant commands located at the NAS/JRB "do not receive administrative leave for Mardi Gras day." In addition, NAF employees were not in a bargaining unit for any Mardi Gras day prior to 2013, as the NAF unit was only certified by the FLRA in April 2012. Therefore, "there is no past practice between NAIL and the Agency regarding Mardi Gras day, as no relationship existed between the parties as it applied to NAF employees."

^{2/} *NFFE, Local 2119 and Department of the Army, Rock Island Arsenal, Rock Island, Illinois, 42 FLRA No. 70 (1991) (Rock Island).*

^{3/} The Employer cites *National Federation of Federal Employees, Local 1655 and Department of Defense, National Guard Bureau, Alexandria, Virginia, 49 FLRA 874 (1994)* in this connection.

Contrary to the Union's position, NAS/JRB civilian employees currently are required to work or take annual leave while military personnel are on liberty during the Thanksgiving, Christmas and New Years' day holiday periods. The Union has provided no evidence to suggest that this has driven a wedge between the military and civilians, and there is no reason to believe that denying administrative leave on Mardi Gras day would be any different. Finally, the Employer's position is supported by the 1985 decision of a grievance arbitrator involving the Department of Agriculture, National Finance Center, New Orleans and Local 2341, American Federation of Government Employees, who, in denying the union's request for administrative leave on Mardi Gras day, concluded that the facility was located many miles from the heart of New Orleans and that there was no showing that employees could not get to work. The Employer's decision to terminate its practice of granting bargaining unit employees administrative leave on Mardi Gras day involves a substantively identical situation.

CONCLUSION

Having carefully considered the evidence and arguments presented in support of their positions, in our view, neither party's proposal provides a reasonable basis for resolving the dispute. At the outset, we note the unique circumstances under which this case arises. In this regard, the Panel determined to assert jurisdiction over the request for assistance on February 11, 2013, because the Union provided uncontroverted evidence during the initial investigation that at least some bargaining unit employees had been told by their supervisors that the activities where they worked would be closed on Mardi Gras day and that they would be required to take annual leave. In fact, given the Employer's management rights arguments, without such evidence there would have been no basis for the Panel to assert jurisdiction over the case.^{4/}

^{4/} Under the FLRA's decision in *Commander, Carswell Air Force Base, Carswell AFB, Texas and American Federation of Government Employees, Local 1364*, 31 FLRA 620 (1988), the Panel may resolve duty-to-bargain questions concerning union proposals raised by employers in the course of its proceedings only where the FLRA has previously found "substantively identical" proposals negotiable. In this case, the FLRA's decision in *Rock Island* supports the negotiability of the Union's proposal, but only if the NAS/JRB decided to close activities and require employees to take annual leave.


After issuing its procedural determination letter, the Panel expected that the parties would address in detail the key issue of the extent to which unit employees were required to take annual leave because supervisors had told them their activities were closing on Mardi Gras day, February 12, 2013. Instead, the party's proposals are prospective in nature, even though they concern an event that has already occurred, and their written submissions provide no new evidence that would shed light on the key issue. Under these circumstances, on the basis of the uncontroverted evidence provided by the Union during the initial investigation, the Panel shall order the Employer to restore the annual leave of any bargaining unit employees who were required to take annual leave by their supervisors because they were informed that the activities where they work would be closed on February 12, 2013. In our view, such an order appropriately places the dispute where it belongs - back with the parties. If the Union continues to believe that the Employer closed activities on Mardi Gras day and required employees to take annual leave, it may seek enforcement of the Panel's order in a forum better suited to determining the merits of its case.

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 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 adoption of the following wording:

Naval Air Station Joint Reserve Base New Orleans shall restore the annual leave of any bargaining unit employees who were required to take annual leave by their supervisors because they were informed that the activities where they work would be closed on February 12, 2013.

By direction of the Panel.


H. Joseph Schimansky
Executive Director

March 15, 2013
Washington, D.C.