

In the Matter of

DEPARTMENT OF INTERIOR
NATIONAL PARK SERVICE
WASHINGTON ADMINISTRATIVE
SERVICE ORGANIZATION
LAKE MEAD NATIONAL PARK
RECREATION AREA
LAKE MEAD, NEVADA

and

Case No. 13 FSIP 54

LOCAL 3062, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

ARBITRATOR'S OPINION AND DECISION

Local 3062, 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 the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of Interior, National Park Service, Washington Administrative Service Organization, Lake Mead National Park Recreation Area, Lake Mead, Nevada (Employer or Lake Mead National Park).

After an investigation of the request for assistance, which concerns a dispute over a wage increase for bargaining unit employees in Fiscal Year (FY) 2012, the Panel determined that the case should be resolved through mediation-arbitration with the undersigned, Panel Member Donald S. Wasserman. The parties were informed that, if a settlement was not reached during mediation, I would issue a binding decision to resolve the dispute. On May 30, 2013, mediation-arbitration was conducted at the Panel's offices in Washington, D.C with representatives of the parties. During the mediation portion of the proceeding, the parties failed to reach a voluntary settlement. Accordingly, I am required to issue a final decision resolving the parties' dispute. In reaching this decision, I have considered the entire record in this matter.

BACKGROUND

Lake Mead National Park is located in Nevada and Arizona. Its mission is to provide recreational activities to visitors and to protect resources for individuals and "future generations." Though serviced by many employees spread throughout the Nevada/Arizona region, a third of its employees are within a 5-mile radius of the Nevada facility. At a minimum, approximately 40 full-time bargaining unit employees who are not subject to furlough are involved in this dispute; they are wage board/bargaining board (wage board) employees who fall under § 704 of the Civil Service Reform Act and § 9(b) of the Prevailing Rate Systems Act (P.L. 92-392). Among other positions, these employees work as custodians, laborers, and skilled craftsmen, such as electricians and plumbers. On May 5, 1994, the parties entered into their current collective bargaining agreement (CBA), which contains an annual rollover provision that allows either party to reopen the CBA 105 days before its anniversary date.^{1/}

ISSUE AT IMPASSE

The parties essentially disagree over whether wage board bargaining unit employees should receive a pay raise for FY 2012 and, if so, what should be the increase.

THE PARTIES' POSITIONS

1. The Union's Position

The Union's final offer is that, for FY 2012, the "effective date and rates of pay to be paid [to] wage board employees . . . will be the start of the first full pay period in January[] 2012" and at the increased rates approved by the Bureau of Reclamation, Lower Colorado Region (Bureau of Reclamation), another Department of Interior activity, and AFGE, Local 1978 (Local 1978), which became effective at the beginning of FY 2012 for similarly-situated employees. In support of its proposal, the Union maintains that the parties have a long standing practice, referred to in Article 28, Section 3 of the

^{1/} Although the Employer recently requested to reopen the CBA, the Union believes that the Employer's request was untimely. The parties will continue to be bound by the CBA's terms, however, until a successor CBA is effectuated.

CBA,^{2/} of implementing the same pay increases and pay rates for its bargaining unit employees as those established in a separate agreement between the Bureau of Reclamation and Local 1978.^{3/} Because of this long standing practice, employees in the bargaining unit should receive the same wage increase, namely a 2.56 percent increase, as employees represented by Local 1978. According to the Union, the last time a dispute arose over whether to use the results of the Bureau of Reclamation wage survey to determine the pay for the bargaining unit was in 1989 when the Employer wanted to break the link to that survey and use a different survey; in resolving the parties' dispute, a grievance arbitrator ruled in favor of the Union that the Bureau of Reclamation survey should continue to be used. Also, the Union believes that, if its employees do not receive a 2.56 percent wage increase, then they will be disadvantaged when compared with similarly-situated employees who received such an increase. Similarly, bargaining unit employees will fall behind General Schedule (GS) employees working at Lake Mead National Park and around the country who have received step and grade increases despite the pay freeze and sequestration and who have generally received higher average pay increases in the past. Further, the Union claims that Office of Personnel Management (OPM) guidance titled "OPM Guidance on Freeze on Pay Adjustments for Federal Civilian Employees" supports its position that the pay freeze should not prevent its employees from receiving a wage increase for FY 2012; such guidance provides that the pay freeze policy in President Obama's memorandum dated December 22, 2010, "may not, as a matter of Federal sector labor law, apply to any increase that is required by a collective bargaining agreement that has already been executed and is in effect as of the date of the Presidential memorandum."

2/ Article 28, Section 3 of the CBA provides that "[t]he effective date and rates of pay to be paid wage board employees . . . will be the effective date and rates approved by the Bureau of Reclamation as contained in the agreements between the Bureau of Reclamation[] . . . and . . . [Local 1978] unless otherwise mutually agreed upon."

3/ Wage increases for employees represented by Local 1978 are not only negotiated but also approximately based on a wage survey of five local entities. According to the Union, the Bureau of Reclamation typically provides its pay information for the new fiscal year in October/November, and the parties implement any increase usually no later than January with retroactive effect.

2. The Employer's Position

While the Employer was willing to consider a wage increase for bargaining unit employees prior to the conclusion of mediation-arbitration,^{4/} the Employer's final offer proposes "to forgo the rate increase for FY 2012 advanced by [the Union] . . . and to retain the wage rates for [wage] board positions granted for FY 2011." In support of its final offer, the Employer argues that it cannot afford to pay, for FY 2012, a 2.56 percent wage increase for bargaining unit employees, totaling approximately \$120,000, because its current budget has been cut 5 percent due to sequestration. According to the Employer, it will likely be unable, as a result of this budget cut, to: (1) fill multiple positions that are vacant as a result of sequestration or that have been vacant since 2011; (2) offer services normally provided to visitors, such as opening the visitors' center more than 5 days per week; and (3) provide on-time payments to vendors and reimbursements to employees who are on official business. Also, the Employer contends that its proposal is consistent with a memorandum issued on December 22, 2010, by President Obama, which not only announced pay freezes for civilian Federal employees but also recommended that agencies "suspend any increases to any pay systems or pay schedules covering executive branch employees that could otherwise take effect as a result of an exercise of administrative discretion." Similarly, the proposal is consistent with a memorandum issued on December 30, 2010, by OPM titled "Freeze on Pay Adjustments for Federal Civilian Employees," which reiterated President Obama's admonition that "agencies should forgo similar pay system and pay schedule adjustments and general increases that could otherwise be granted by an agency to employees through administrative discretion." Finally, the Employer asserts that a wage increase for FY 2012 is unwarranted because bargaining unit employees have received unjustified wage increases over the years that have made these employees the highest paid workers of their kind in the country.

^{4/} Before the Union's request for assistance was filed, the parties informally discussed the possibility of a 1 percent pay increase for FY 2012 in their bilateral bargaining session but that idea was rejected by the Union and not reprised during their mediation session with the Federal Mediation Conciliation Service.

CONCLUSION

After carefully reviewing the arguments and evidence presented during the mediation-arbitration proceeding, I conclude that a modified version of the Union's final offer provides the more reasonable basis for resolving the parties' impasse. In this regard, the Employer, for FY 2012, shall provide each bargaining unit employee with the following wage increases: (1) a 1 percent increase in the employee's FY 2011 hourly base rate, effective January 1, 2012; (2) a 1 percent increase in the employee's FY 2011 hourly base rate, effective April 1, 2012; and (3) a 0.56 percent increase in the employee's FY 2011 hourly base rate, effective July 1, 2012. These wage increases shall be provided to each employee in a lump sum payment.

To illustrate how the Employer should calculate the wage increase for each bargaining unit employee, I will provide the parties with some examples. For instance, plumbers, whose hourly wages are among the highest in the bargaining unit, made \$40.54 per hour in FY 2011. Assuming that, during FY 2012, a plumber worked 2,080 hours, that employee would receive a 1 percent increase on his/her FY 2011 hourly rate, namely \$0.41 per hour, during the last 9 months of FY 2012, for a total of \$639.60.^{5/} The employee would receive another \$0.41 hourly increase during the last 6 months of FY 2012, for a total of \$426.40.^{6/} Finally, that employee would receive a 0.56 percent increase on his/her FY 2011 hourly rate, namely \$0.23 per hour, during the last 3 months of FY 2012, for a total of \$119.60.^{7/}

5/ To calculate this total, 2,080 hours was divided by 12 months and the result was multiplied by 9 months to derive the hours worked during those 9 months, namely 1,560 hours; 1,560 hours was then multiplied by \$0.41 (1,560 x \$0.41) to determine that portion of the total wage increase.

6/ to calculate this total, 2,080 hours was divided by 12 months and the result was multiplied by 6 months to derive the hours worked during those 6 months, namely 1,040 hours; 1,040 hours was then multiplied by \$0.41 (1,040 x \$0.41) to determine this portion of the total wage increase.

7/ To calculate this total, 2,080 hours was divided by 12 months and the result was multiplied by 3 months to derive the hours worked during those 3 months, namely 520 hours; 520 hours was then multiplied by \$0.23 (520 x \$0.23) to determine this portion of the total wage increase.

Thus, adding all these amounts together, the plumber should receive \$1,185.60 as a lump sum payment for FY 2012, and the plumber's hourly rate, at the start of FY 2013, would be \$41.58.^{8/}

Water systems operators, whose hourly wages are at the mid-range when compared with other bargaining unit employees, made \$33.83 per hour in FY 2011. Assuming that, during FY 2012, a water systems operator worked 2,080 hours, that employee would receive a 1 percent increase on his/her FY 2011 hourly rate, namely \$0.34 per hour, during the last 9 months of FY 2012, for a total of \$530.40. The employee would receive another \$0.34 hourly increase during the last 6 months of FY 2012, for a total of \$353.60. And that employee would receive a 0.56 percent increase on his/her FY 2011 hourly rate, namely \$0.19 per hour, during the last 3 months of FY 2012, for a total of \$98.80. Consequently, in a lump sum payment, the water systems operator should receive \$982.80 for FY 2012, and the water systems operator's hourly rate, at the start of FY 2013, would be \$34.70.

Additionally, a maintenance worker (B), whose hourly wage is among the lowest when compared with other bargaining unit employees, made \$25.65 per hour in FY 2011. Assuming that, during FY 2012, a maintenance worker worked 2,080 hours, that employee would receive a 1 percent increase on his/her FY 2011 hourly rate, namely \$0.26 per hour, during the last 9 months of FY 2012, for a total of \$405.60. The employee would receive another \$0.26 hourly increase during the last 6 months of FY 2012, for a total of \$270.40. And that employee would receive a 0.56 percent increase on his/her FY 2011 hourly rate, namely \$0.14 per hour, during the last 3 months of FY 2012, for a total of \$72.80. Thus, in a lump sum payment, the maintenance worker should receive \$748.80 for FY 2012, and the maintenance worker's hourly rate, at the start of FY 2013, would be \$26.31.

I believe that it is appropriate to order a modified version of the Union's final offer for several reasons. As the Union demonstrated, the parties have a long standing practice, which has been in effect for roughly 40 years, of implementing the same pay increases and pay rates for its bargaining unit employees as those established in a separate agreement between the Bureau of Reclamation and Local 1978. Because of this long

8/ To calculate this total, \$40.54 was multiplied by 2.56 percent (40.54×0.0256) and the result was added to \$40.54 to derive the new hourly rate.

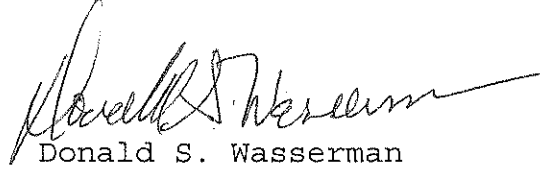
standing practice, the Employer, the party attempting to change the *status quo* for FY 2012, has the initial burden of demonstrating why the current practice should be changed. In my view, the Employer has failed to meet that burden. In this regard, while the Employer relies on memoranda issued by President Obama and OPM, recommending that agencies suspend pay increases that could become effective if agencies exercise their administrative discretion, such guidance is merely advisory and does not prevent these bargaining unit employees from receiving a wage increase for FY 2012 through negotiations with their agency counterparts. Also, the comparability data presented by the Employer do not establish its assertion that employees in the bargaining unit are the highest paid workers of their kind in the country. While the Employer submitted Department of Defense wage surveys from major metropolitan areas across the country and a document comparing the pay raises of wage board and GS employees from 2001 to 2013, such evidence is irrelevant because wage grade (WG) and GS employees are not similarly situated to wage board employees; WG and GS employees, as opposed to wage board employees, are eligible for regular grade and step increases and, despite the pay freeze, have received such increases. Nevertheless, because the Agency has suffered a 5 percent budget cut as a result of sequestration, I believe that it is appropriate, in balancing the equities, to order a back loaded, graduated wage increase for FY 2012 so that the financial impact of an increase on the Employer's budget is reduced. Accordingly, consistent with the foregoing discussion, I will order the adoption of a modified version of the Union's final offer.

DECISION

I hereby order the parties to adopt the following modified version of the Union's final offer to resolve their impasse:

For fiscal year (FY) 2012, the Employer shall provide each bargaining unit employee with the following wage increases: (1) a 1 percent increase in the employee's FY 2011 hourly base rate, effective January 1, 2012; (2) a 1 percent increase in the employee's FY 2011 hourly base rate, effective April 1, 2012; and (3) a

0.56 percent increase in the employee's FY 2011 hourly base rate, effective July 1, 2012. These wage increases shall be provided to each employee in a lump sum payment.

A handwritten signature in black ink, appearing to read "Donald S. Wasserman", written in a cursive style.

Donald S. Wasserman
Arbitrator

June 28, 2013
Washington, D.C.