United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF THE ARMY FORT KNOX FORT KNOX, KENTUCKY and LOCAL 2302, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case No. 15 FSIP 125

DECISION AND ORDER

The Department of the Army, Fort Knox, Fort Knox, Kentucky (Employer) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse, under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), between it and Local 2302, American Federation of Government Employees, AFL-CIO (Union).

Following an investigation of the request, which concerned a dispute over numerous provisions for a successor collective-bargaining agreement (CBA), the Panel determined that the issues should be resolved by ordering the Union to show cause why eight contract provisions, previously agreed to by the parties but repeatedly rejected by the Union's membership, should not be imposed by the Panel. In the event that the Union continued to reject the prior agreements, it was directed to submit alternative wording. The Panel also determined that the parties' dispute over uniforms for police officers should be resolved by directing the parties to submit their final offers and supporting statements of position (SOPs) on the issues. Written submissions were made by the parties pursuant to the Panel's determinations, and the Panel has now considered the entire record.

BACKGROUND

The Employer's operation consists of several military Commands which provide a variety of services, including infrastructure, health care, information management and contracting. The local Union represents several bargaining units at Fort Knox including a professional and non-professional bargaining unit consisting of approximately 1,575 employees who are covered by a CBA implemented in 2001. The contract remains in effect until replaced by a successor agreement.

In 2009, the Employer reopened the entire CBA, having concluded that it was outdated because it focused on the working conditions of a blue collar workforce that was rapidly being replaced. After participating in bargaining and mediation, the parties reached agreement on a successor CBA on January 26, 2012. The contract, however, was not ratified by the Union membership; the Union identified seven articles that it wanted to revise. Negotiations resumed and, once again, agreement was reached on the CBA. When a second ratification vote was taken, it too failed. Eventually, the parties returned to the table to address the provisions which the Union contended were the cause of the second failed ratification vote, and an agreement was reached by the parties for the third time. A third ratification vote was taken on June 10, 2014, but, again, the contract was not ratified. The Union provided management with a third list of desired changes. That list requested revisions to 12 provisions, 10 of which were the same as those raised after the second failed ratification vote. New issues involving changes to uniforms for security guards and police officers in the Department of Emergency Services were added. The parties then sought assistance from the Federal Mediation and Conciliation Service (FMCS) on the uniform issues, but they were unable to reach complete agreement. In all, the Employer's request for Panel assistance identified 19 unresolved provisions.[1/]

1/ During the investigation of the case, the parties resolved 9 issues, but 10 others remained in dispute. Following the Panel's issuance of the *Order to Show Cause (OSC)*, the Union accepted the wording the parties had agreed to during their negotiations in 2010 and 2012 on seven provisions. Furthermore, on January 27, 2016, the parties reached agreement to resolve all uniform issues as they pertain to police officers and security guards, except for headgear and body armor for police officers. As a result, three issues remain for resolution by the Panel.

ISSUES AT IMPASSE

The parties continue to disagree over: (1) Article 2, concerning the applicability of local and Army policies and regulations in existence when the successor CBA goes into effect; (2) whether police officers should be required to wear a "campaign hat" while performing routine duties; and (3) whether the body armor vest should be worn under or over the police uniform shirt.

POSITIONS OF THE PARTIES

1. Article 2, Provisions of Laws and Regulations

a. The Employer's Position

The Employer's position is that the Panel should impose the following wording:

> In the administration of all matters covered by this Agreement, officials of the Employer and employees of the Union's bargaining unit are governed by existing or future Federal laws and Federal regulations of appropriate authorities, including policies set forth in Presidential Orders, **by local published policies and regulations in existence at the time the Agreement was approved unless this Agreement specifically changes a part or all of those local policies and regulations and by published Agency policies and regulations in existence at the time this Agreement was approved.** Subsequently published Agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling Agreement at a higher Agency level will be subject to impact and implementation negotiations in accordance with Article 49 and as require by law. Where any Army regulation conflicts with this agreement and/or any amendment, and no compelling need exists, the Agreement shall govern until impact and implementation negotiations, as required by law, are complete. [Only the highlighted wording is in dispute.]

The entire provision should be imposed because it was agreed upon and signed by the parties on November 10, 2009. The Union never identified the highlighted wording as a reason for any of the three failed ratification attempts, nor did it raise the

provision as an issue during mediation held in 2014. Only belatedly, during summer 2015, did the Union claim that the wording was problematical. In addition, the Union's assertion that it could not possibly be aware of all locally published policies and Agency regulations that have occurred since 2009 is without merit. Local policies and Agency regulations are published on-line and weekly notification of changes are available through e-mail subscription. Therefore, the Union has the ability to acquaint itself with locally published policies and Agency regulations. Since 2009, the Employer has continued to negotiate with the Union over changes set forth in local policies and Army regulations that affect conditions of employment, including smoking policy, telework, and uniform requirements for police and security guards. In conclusion, the Union has failed to show cause why the provision should not be imposed by the Panel.

b. The Union's Position

The Union proposes that the highlighted wording in Article 2 be omitted. It maintains that the lapse of time since 2009, when the Union first agreed to be bound by local policies and Agency regulations in existence when the CBA is implemented, could subject the bargaining unit to policies and regulations that were never negotiated with the Union. In this regard, it does not want to rely on the Employer's assurances that it has been giving the Union notice and an opportunity to bargain over local policies and Agency regulations which impact working conditions. Thus, the Union's right to bargain could be waived if the provision is imposed.

CONCLUSIONS

Having carefully considered the parties' responses to the *OSC*, we find that the Union has failed to show cause why the Panel should not impose the wording in Article 2, as previously agreed to by the parties. In our view, there appears to be minimal risk that the provision may effectively waive a Union right to bargain over a negotiable matter. The Employer has provided examples of locally published policies and regulations affecting conditions of employment that have been negotiated with the Union since 2009. Moreover, there is no evidence in the record that the Employer has failed to give the Union notice and an opportunity to bargain over any local policies or Agency regulations affecting working conditions implemented since 2009. Accordingly, we shall order the adoption of the provision the

parties agreed to in 2009 to resolve their impasse on this issue.

2. Headgear for Police Officers

a. The Employer's Position

The Employer proposes that the "campaign hat" be the primary headgear worn by police officers while on duty because it clearly identifies them as law enforcement, especially from a distance. There is a need for a single, readily-identifiable uniform for police officers and the relationship between the wearing of the campaign hat and their security "is obvious." In addition, the proposal is consistent with an agreed-upon provision, to be included in the successor CBA, which requires that employee attire be consistent with that worn by civilian employees in the local community.[2/] In this regard, precedent exists for the wearing of campaign hats because they also are worn by the Kentucky State Police and police officers employed by the jurisdictions surrounding Fort Knox.

b. The Union's Position

The Union proposes that police officers be given the discretion to decide what headgear to wear while performing their duties, except during officially designated ceremonies when the campaign hat would be required. If a ball cap is worn, it should be blue with the DACP logo on its front. A navy knit fleece cap or a fur-type "trooper" hat may be worn during inclement weather. The Union asserts that, under the current CBA, officers had been able to elect, other than for ceremonial functions, the type of headgear to be worn, and that practice should continue. There is no justification for routinely wearing campaign hats because officers already are identifiable as law enforcement through their uniforms and insignia. Officers do not want to wear campaign hats as a matter of routine because they are hot and cumbersome. Furthermore, a

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2/ Article 33-1, Dress Code in the current CBA, as well as a provision to be included in the successor CBA, provides that attire

> shall be appropriate for the duties performed (*i.e.*, commensurate with attire normally worn by civilian employees in local communities engaged in activities similar in nature to those in which the government employee works).

requirement to do so would conflict with Article 33-1 of the current and successor CBA which provides that employee dress shall be commensurate with civilian dress in the surrounding community. The Union's survey shows that police officers in the local area surrounding Fort Knox do not routinely wear campaign hats.

CONCLUSIONS

Based upon our evaluation of the record created by the parties, we are unable to conclude that either party's position should be adopted to resolve the issue. In this regard, both parties maintain that the other's proposal conflicts with a dress code provision, to be included in the successor CBA, requiring employee dress to be commensurate with the attire worn by civilians who perform the same type of work in the communities surrounding Fort Knox. The evidence submitted, however, is inconclusive as to the practices of the police who work in the local area and, therefore, we are unable to sustain either party's position. Accordingly, we shall order the parties to withdraw their proposals. If the Union believes that the requirement to wear the campaign hat, which the Employer has already implemented, violates the "community attire" provision in Article 33-1 it should file a grievance under the parties' negotiated grievance-arbitration procedure.

3. **Body Armor**

a. The Employer's Position

Essentially, the Employer proposes that the ballistic vest should be worn under the uniform shirt and over the standard tee shirt; it is to be worn under the outermost garment and not exposed. The Employer asserts that the body armor vest is an essential safety gear designed to protect officers from impact trauma. It also is "clearly within management's right" to require that employees wear the body armor in the manner prescribed. Its position reflects a long-standing past practice concerning how body armor vests are to be worn by police officers.

b. The Union's Position

The Union proposes that, at an employee's discretion, the body armor vest *may* be worn under the uniform shirt. Police officers also would have the option of wearing, and purchasing at their own expense, an external vest carrier which covers the

body armor and matches the existing uniform shirt. The Union describes the external vest as a cosmetic outer shell intended to house the wearer's body armor in a concealable manner. The external (outer) vest would have the officer's name plate and badge on the front, but no molly attachments or extra gear (holsters, hand cuffs, etc.) would be attached to the vest.[3/] The visible portion of the shirt worn underneath would match the uniform shirt and the hidden lower portion may be of featherweight knit material.

The Union argues that its proposal should be adopted because body armor vests are hot, cumbersome and uncomfortable when worn under the uniform shirt. Since body armor must not be exposed, officers who chose to wear the body armor over their uniform shirt would conceal the body armor in an external vest carrier, to be purchased at the officer's expense. This would permit the body armor to be removed quickly to expose the uniform shirt during times when it does not need to be worn.

CONCLUSIONS

After carefully weighing the evidence and arguments presented by the parties on this issue we conclude that the Employer's position is more persuasive. The requirement to wear body armor vests under the uniform shirt is a long-standing past practice. In our view, the Union's proposal is likely to offer only minimal relief to police officers who find the body armor uncomfortable and cumbersome. In this regard, it is unclear how much more comfortable it would be to permit officers to wear a uniform shirt under the body armor encased in the external vest. Additionally, the Union's proposal would create a complicated scenario requiring the Employer to approve the design of the external vest carrier and initiate its procurement, and require officers to absorb an additional expense of paying for the external vest carrier from their uniform allowance. For these reasons, we shall order the adoption of the Employer's proposal.

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 pursuant to the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal

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3/ Game Enforcement officers, however, may attach equipment to the vest.

Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the following:

1. **Article 2, Provisions of Laws and Regulations**

The parties shall adopt the wording they agreed to on November 10, 2009.

2. **Headgear for Police Officers**

The parties shall withdraw their proposals.

3. **Body Armor**

The parties shall adopt the Employer's proposal.

The parties are further ordered to include in their successor collective bargaining agreement the following provisions resolved during the Panel's processes: (1) Article 9-3.a.4.A: Straight Shift Work Schedule; (2) Article 9-3.c.2: Shift Selection; (3) Article 33-4: Dress Code Changes; (4) Article 34-6: Procedures for Requesting Annual Leave; (5) Article 35-1: Procedures for Requesting Sick Leave; (6) Article 49-2.c.1: Consequences for Failure to Meet a Timeline for Mid-term Bargaining; and (7) Article 49-2.c.2: Implementation of Agreed-Upon Provisions after 30 Days of Bargaining.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

February 10, 2016
Washington, D.C.