In the Matter of

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
BUFFALO DISTRICT
BUFFALO, NEW YORK

and

LOCAL 2930, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 16 FSIP 22

## ARBITRATOR'S OPINION AND DECISION

The Department of the Army, U.S. Army Corps of Engineers, Buffalo District, Buffalo, New York (Employer) 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, 5 U.S.C. § 7119, between it and Local 2930, American Federation of Government Employees, AFL-CIO (Union). After an investigation of the request for assistance, which arises from negotiations over changes in the Joint Travel Regulations (JTR) issued by the Department of Defense (DOD), the Panel directed the parties to mediation-arbitration with the undersigned. Accordingly, on February 29 and March 1, 2016, a mediation-arbitration proceeding was convened at the Employer's facility in Buffalo, New York. During the mediation phase, the parties narrowed the dispute and reached agreement on several provisions that are to be incorporated in a Memorandum of Agreement (MOA), but they could not achieve a voluntary resolution on six other matters. Consequently, I am required to impose terms to settle the impasse. In reaching my decision, I have considered the entire record developed by the parties including their final offers and post-hearing briefs.

## BACKGROUND

The Employer's mission is to provide engineering services that support a wide variety of civil works projects which involve restoration and remediation. The Union represents a bargaining unit consisting of approximately 210 professional and non-professional employees, both General Schedule and Wage Grade; typically, employees hold a wide range of positions in

the engineering field. They are stationed in a geographic area around Lake Erie that includes parts of New York, Pennsylvania and Ohio. The parties are covered by a collective-bargaining agreement (CBA) that went into effect in 1998, and expired in 2007. They continue to follow its terms until a successor CBA is implemented.

On October 1, 2014, the DOD implemented changes in the JTRs which are the travel regulations followed by civilian employees of the DOD and its subordinate agencies. The modifications are intended to reduce agency costs incurred by employees on long-term temporary duty (TDY) assignments that involve travel lasting more than 30 days at one location. The most significant change reduces *per diem* to 75-percent of the local allowance for TDY assignments in excess of 30 days and to 55-percent of the local *per diem* allowance for TDY assignments that last more than 180 days.[1/] The daily allotment for meals and incidental expenses (M&IE) also would be reduced to 75- or 55-percent, respectively, of the locality rate. Other changes in the JTR make ATM fees, baggage tips, laundry/dry cleaning and transportation tips part of the daily incidental expense allotment for employees on official travel; previously, those expenses were separately reimbursable.[2/]

## ISSUES AT IMPASSE

Subsequent to the parties' exchange of their final offers, they reached agreement on an additional issue. Consequently, the following five issues remain at impasse: (1) determinations concerning the availability of suitable commercial lodging; (2) the timing of information to be provided to the Union; (3) authorization of the lodgings plus method of reimbursement[3/] when

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1/ A 2011 study by Runzheimer, which involved a review of FY 2011 travel vouchers for DOD employees, disclosed that reducing *per diem* rates to 75 percent for TDY travel from 31 to 180 days, would save $18.7M in travel expenditures; an additional $3.8M in cost savings would be realized if daily *per diem* is reduced to 55 percent for TDY travel over 180 days.

2/ To date, bargaining-unit employees in the Buffalo District have not been affected by the changes in the travel regulations because of the parties' on-going negotiations.

3/ Under the lodgings-plus *per diem* method, a traveler is reimbursed lodgings up to the maximum U.S. Government-

suitable commercial lodging cannot be reserved at or below the reduced *per diem* rate; (4) whether laundry expenses should be considered "incidental expenses" and, therefore, reimbursable as part of the M&IE allowance; and (5) selection of employees for long-term TDY assignments.

## PARTIES' POSITIONS

### 1. Availability of Suitable Commercial Lodging

The parties reached agreement on three of four criteria which must be met in order for the Employer to prescribe a reduced flat rate for lodging and M&IE.[4/] They disagree over whether the lodging must actually be reserved at or below the reduced rate (the Union's position) or whether it is sufficient for the Employer to have made a determination that the lodging is available (the Employer's position).

The Union proposes that one of the criteria for providing a traveler with a reduced flat rate *per diem* is that the Employer must determine "in advance of the travel order being approved, that suitable commercial lodging *has been reserved* at or below the prescribed reduced rate for the entire duration of the TDY." (Emphasis added.) The Union contends that in order for the Employer to have a sufficient basis for making the reduction the lodging must actually be reserved. Employees cannot rely on a mere assessment by management that suitable commercial lodging is available because, until a reservation is made, the price and availability of a room may change. The Employer does not have a sufficient basis for making the reduction if it is operating under a mere belief that suitable lodging is available.

The Employer proposes that the following condition must be met in order for there to be a reduced rate of *per diem* for long

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established amount per night for a locality, plus Meals and Incidental Expenses (M&IE) paid at a fixed daily amount.

4/ The three agreed upon conditions are: (1) the employee will have sufficient time during non-duty hours to purchase groceries, prepare meals, and have a sufficient amount of time to rest or sleep prior to returning to work; (2) the TDY will be more than 30 consecutive days at one location; and (3) the daily allowable amount for lodging and the daily allowable amount for M&IE is stated in the travel order authorization in advance.

term TDY: "The Employer has determined, in advance of the travel order being approved, that suitable commercial lodging *is available* at or below the prescribed reduced rate for the entire duration of the TDY." (Emphasis added.) It contends that it is sufficient for management to have determined that suitable commercial lodging is available, although unreserved.

## OPINION

Having considered the proposals and arguments, I find that both parties shall withdraw their proposals. The parties have agreed upon other provisions in the MOU which address situations where an employee is unable to find suitable commercial lodging at the reduced *per diem* rate. In this regard, the agreed upon procedure provides that when an employee is unable to find suitable commercial lodging at the reduced *per diem* rate, the employee is to contact the travel office for assistance. If appropriate lodging still cannot be found, the employee is to provide a written statement to the authorizing official (AO) detailing the attempts to find lodging; upon receipt of the employee's statement of non-availability, the AO is to authorize the lodging plus method of *per diem* and place in the remarks section of the travel orders and voucher, "suitable commercial lodging is not available and the lodging reimbursement will not be reduced." The parties already have a process for dealing with situations where suitable commercial lodging cannot be found and, as a result, the traveler is entitled to the higher *per diem* rate for the locality. The objective of the parties' proposals is unclear and it is not apparent how either proposal would add any benefit to the process.

**2. The Timing of Information to be Provided to the Union**

The parties have agreed to conduct a joint labor-management study to review the impact on bargaining-unit employees of the JTR change which reduces the *per diem* and M&IE allowance for those on long-term TDY assignments. The review is to take place during a 4-month period prior to the expiration of the MOU. The Employer has agreed to provide the Union with the number of bargaining unit employees who have been on long-term TDY assignments during the 3-year term of the MOA. The dispute is over when information should be provided to the Union.

The Employer proposes that the parties shall, "no earlier than 120 days prior to 3 years from the latest date this Agreement is executed, consider the data collected including the number of bargaining unit employees who previously went on long

term TDY since the date this Agreement was last executed." Essentially, the Employer contends that information concerning the number of bargaining unit employees who have been on long-term TDY should be provided to the Union during the 120-day period when the parties are reviewing the impact of the JTR changes on bargaining unit employees. In order to reduce the burden on management of gathering the information and providing it to the Union on an on-going basis, the Employer proposes that the information be provided only once during the 120-day period when the labor-management team is reviewing the impact of the JTR changes on employees. The Union contends that it should have the information prior to the time the labor-management team begins its review. It proposes that "(m)anagement will provide the number of bargaining unit employees who previously went on long-term TDY since the date this Agreement was last executed, no later than 120 days prior to the expiration date . . ." of the MOA. The Union maintains that the information is needed before the parties begin the review process so that both sides will be better prepared for their discussions. Under the Employer's proposal, there is no certainty when the information would be provided to the Union and, in fact, a literal reading of it could mean that the Employer is under no obligation to provide the data until immediately before the window period closes for the review.

## OPINION

The resolution of this issue shall be based upon the Union's proposal. In order to ensure that the joint labor-management team has the data necessary to conduct its evaluation, the information concerning the number of bargaining unit employees who had been on long-term TDY travel during the 3-year duration of the MOA should be provided to the Union before the review process begins. I shall not prescribe a specific date for management to provide the information, but it should be submitted to the Union before the 120-day review window opens. Providing data before the review period opens should give the parties time to evaluate it before convening their discussions. Under the Employer's proposal, however, the data could be submitted to the Union at any time during the 120-day review period, potentially diminishing the time the parties have to conduct their review.

3. **Authorization of the Lodgings Plus Method of Reimbursement When Suitable Commercial Lodging Cannot be Reserved at or Below the Reduced *Per Diem* Rate**

The Employer proposes the following:

> If lodging does not meet the criteria in paragraphs 4(a) through 4(k)[5/] and/or 5(a)[6/] above, the AO may authorize up to 100% of lodging. The traveler will still receive M&IE at the reduced rate (75% for TDY at 31-180 days and 55% for TDY of 181+ days).

The Employer's proposal is taken directly from wording in the revised JTR. In this regard, it provides that in the event the Commercial Travel Office, which offers assistance to employees having difficulty finding suitable commercial lodging within the reduced *per diem* rate, determines that lodging is not available within the reduced *per diem* rate, the AO may authorize actual lodging for the traveler, not to exceed the locality *per diem* rate. In such circumstance, however, the JTR further requires that the traveler would still receive the reduced rate for M&IE. The Employer argues that the revised regulation has been applied DOD-wide and, with only very few exceptions, it has been implemented throughout the U.S. Army Corps of Engineers. The

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5/ In MOA sections 4(a) through (k), the parties have agreed to the criteria for determining "suitable commercial lodging." One such requirement is that the "room or suite must have a fully equipped kitchen or kitchenette suitable for storing groceries and preparing meals."

6/ In MOA section 5(a), the parties have agreed to the following circumstances under which the Employer will prescribe a reduced flat-rate for lodging and a reduced flat rate for M&IE:

> (2) The employee will have sufficient time during non-duty hours to purchase groceries, prepare meals, and have a sufficient amount of time to rest or sleep prior to returning to work;
>
> (3) The TDY will be more than 30 consecutive days at one location; and
>
> (4) The daily allowable amount for lodging and the daily allowable amount for M&IE is stated in the travel order authorization in advance.

Union simply has not demonstrated why the Buffalo District should be exempt from a requirement driven by the need to reduce travel expenditures.

The Union proposes that "(i)f the criteria in paragraphs 5a (1-4) are not met the AO will authorize the lodgings plus method of reimbursement." In essence, the proposal provides that, if suitable commercial lodging cannot be found, the employee would receive the full *per diem* rate for the locality and a non-reduced rate for M&IE. In support of its proposal, the Union argues that if an employee does not have lodging with kitchen facilities the employee would have to take meals at restaurants. There will be no opportunity for the employee to prepare meals and eat in, thereby reducing expenses. In such circumstance, the employee should not receive the reduced M&IE allowance because dining out clearly is a more expensive proposition. The Union's primary concern is that employees will have to pay for meals out-of-pocket and, thereby, subsidize the cost of official Government travel because the reduced M&IE is not likely to cover daily meal expenditures at restaurants. The Union maintains that the Employer has the discretion to increase the M&IE allowance above 75- or 55- percent when warranted, and employee lodgings that do not have kitchen facilities represent a situation when management should authorize the full M&IE allowance.

## OPINION

At this point, the revised JTRs have been in effect DOD-wide for approximately 18 months and neither party is aware of any studies concerning their impact on either agency travel budgets or employees on long-term TDY assignments who are contending with the reductions imposed by the regulations. The Union expresses a concern that employees may be placed in positions of having to underwrite their own travel expenses in the event that they do not have lodgings with kitchen facilities and must resort to other alternatives for taking their meals. But this is mere speculation as the Union has no evidence to support its concern. The parties are to be commended for agreeing to form a joint-labor management committee to study the impact of the JTR changes on employees who have been on long-term TDY assignments. They will be creating a forum for examining data obtained from employees who have experienced long-term TDY assignments under the revised regulations. In my view, once the parties review the data they are to collect from employees and make assessments with respect to

it, they will be in a better position to determine, through evidence, whether employees are experiencing an adverse financial impact. Without such evidence, I am constrained to resolve the issue on the basis of the Employer's final offer.

**4. Laundry Expenses**

The Union proposes that

> (i)n accordance with the Federal Travel Regulation, expenses incurred for laundry, cleaning and pressing of clothing at a TDY location, while on long-term TDY, will be reimbursed as a miscellaneous reimbursable expense.

Under the modified JTRs, laundry expenses no longer are separately reimbursable but now are considered "incidental" expenditures to be claimed under the allowance for incidentals. The Union maintains that the M&IE allowance already is underfunded for employees on long-term TDY assignments and adding an additional expense to be covered by it will mean that employees are going to be burdened with a travel expense for which they are not likely to be reimbursed. To avoid such a situation, the Union contends that laundry expenditures should be reimbursable as a "miscellaneous" expense, separate from the M&IE.

The Employer proposes the following:

> Laundry, ATM fees, and long distance calling are now considered incidental expenses and are covered by the incidental portion of the daily M&IE rate. As such, these expenses are not separately reimbursable. Employees are reminded that authorized mission related expenses are separately reimbursable outside of the travel system through submission of a Claim for Reimbursement for Expenditures on Official Business (currently SF-1164) or its successor form.[7/]

The Employer is willing to accommodate the Union's interest by permitting laundry expenses, incurred as a result of the employee's mission-related work, to be claimed as a separately

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7/ The Union does not dispute that portion of the Employer's proposal concerning ATM fees and long distance calling expenses.

reimbursable expenditure by filing an SF-1164 form. The Employer objects to the Union's proposal that laundry expenses be reimbursable as a miscellaneous expense because the proposal is inconsistent with the JTR and accompanying guidance. The Employer is unwilling to make "Buffalo District-specific changes that undermine the DOD's cost-saving objectives and vary DOD-wide mandates and guidance."

## OPINION

Having considered the parties' proposals and positions, I find that the dispute over laundry expenses should be resolved on the basis of the Employer's proposal. In this regard, it offers a process under which employees may receive reimbursement for laundry expenses incurred as a result of mission-related work. By filling an SF-1164, "Claim for Reimbursement for Expenditures on Official Business," employees are eligible to receive reimbursement without having those expenses applied against an already reduced M&IE allowance.

### 5. Selection of Employees for Long-term TDY Assignments

The Union captions its proposal as a "(s)eniority process for assigning employees to long-term TDY assignments." The proposal provides that:

> (m)anagement retains the right to determine the qualifications necessary to perform the assignment, and seniority applies only to employees management determines are equally qualified. In determining whom to assign, management will first consider mission requirements, the position to be filled, the employee's qualifications, and the employee's work load and availability. If there are 2 or more employees equally qualified for the assignment and there are no volunteers for the assignment, the most junior employee, as determined by Service Computation Date for leave will be assigned.

The Union contends that, because *per diem* and M&IE allowances will be reduced when the revised JTRs are implemented in the Buffalo District, employees perceive that they will incur out-of-pocket expenses during long-term TDY assignments. Therefore, there will be a disincentive for employees to volunteer for such assignments. The Union asserts that the parties should have a procedure in place for determining long-term TDY assignments when there are no volunteers. It contends that its proposal

gives the Employer the discretion to determine the qualifications needed for the assignment, employee workload and availability and whether there are any mission-related requirements for the job. After considering such factors, and in the absence of a qualified volunteer, the Employer would be required to select for the long-term TDY assignment the most junior qualified employee, as determined by service computation date. Furthermore, the proposal is consistent with Federal Labor Relations Authority case law concerning procedures for selecting employees among those equally qualified to perform the work.

The Employer's final offer provides that "(t)he decision to assign an employee to long-term TDY will not be based on criteria unrelated to the mission." The Employer argues that it has no interest in selecting the most junior qualified employee for a job when the assignment may require specialized skills and experience. Many employees may be minimally qualified for an assignment, but management should have the discretion to consider other factors not provided in the Union's proposal. Determinations concerning long-term TDY assignments heretofore have not been the subject employee grievances and management intends to continue to make those assignments fairly and equitably while, at the same time, taking into consideration mission-related requirements for the TDY assignment.

## OPINION

One factor for determining the merits of a proposal is whether there is a demonstrated need for it. At this point, there is no basis to conclude that employees will volunteer less frequently for TDY assignments once the revised agency travel regulations go into effect. Therefore, I am reluctant to adopt the Union's proposal when it is unclear whether the process it proposes is needed. Furthermore, while many employees may be minimally qualified for an assignment, the Employer argues, convincingly, that management should have the discretion to select an employee for a long-term TDY assignment when specialized skills and experience are needed to perform the job. The Employer's proposal provides for such discretion and I shall order its adoption to resolve the issue.

## DECISION

The parties shall take the following actions to resolve their dispute:

1. **Availability of Suitable Commercial Lodging:**

   The parties shall withdraw their proposals.

2. **The Timing of Information to be Provided to the Union:**

   The parties shall adopt the Union's proposal.

3. **Authorization of the Lodgings Plus Method of Reimbursement when Suitable Commercial Lodging Cannot be Reserved at or Below the Reduced *Per Diem* Rate:**

   The parties shall adopt the Employer's proposal.

4. **Laundry Expenses:**

   The parties shall adopt the Employer's proposal.

5. **Selection of Employees for Long-term TDY Assignments:**

   The parties shall adopt the Employer's proposal.

Donna M. DiTullio
Arbitrator

March 31, 2016
Annapolis, Maryland