

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF DEFENSE  
DOMESTIC DEPENDENT ELEMENTARY  
AND SECONDARY SCHOOLS

and

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1770

Case No. 17 FSIP 054

DECISION AND ORDER

The Department of Defense, Domestic Dependent Elementary and Secondary Schools (Agency), filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse over a successor collective bargaining agreement under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the American Federation of Government Employees, Local 1770 (Union).

Following an investigation of the request for assistance, the Panel asserted jurisdiction over three issues.<sup>1</sup> The Panel also determined that this matter should be resolved through an Informal Conference, with a Panel representative, Chairman Mark Carter. The parties were informed that if they were unable to reach a complete settlement of the disputed issues during the Informal Conference, the representative would notify the Panel of the status of the dispute, including the parties' final offers and his recommendations for resolving the impasse. The Panel would then resolve any remaining disputed issues by taking whatever action it deemed appropriate, which could include the issuance of a binding decision.

Accordingly, Panel Chairman Mark Carter conducted an Informal Conference with the parties at the Agency's facility at Ft. Bragg, N.C. During the Informal Conference, the parties reached agreement in regard to two of the issues (work breaks and dress), but were unable to resolve one final issue (smoking). At the conclusion of the Informal Conference, Chairman Carter instructed

<sup>1</sup>The three issues were smoking, work breaks, and dress.

that the parties could submit written statements in support of their final offers. The Agency submitted such a brief; the Union did not submit a brief.

### BACKGROUND

The mission of the Agency is to provide elementary and secondary education for the dependents of military personnel in the continental United States, Europe, and the Pacific, as well as dependents of federal employees in Puerto Rico and Guam. The Union represents of around 300 non-professional employees at Ft. Bragg, NC. These employees are Custodians, Classroom Aides, Educational Aides, and Library Assistances. They are paid up to the WG-6 level.

The parties bargained a collective bargaining agreement in 2009. That agreement expired in 2013. The parties have no other agreements covering the substances of the proposal currently at issue.

### ISSUE AT IMPASSE

The Agency has proposed Article, Section 11, which seeks to make campuses tobacco-free.

### POSITIONS OF THE PARTIES

#### 1. The Agency's Position

Based on the recommendation from the Agency's multiple School Boards, the Agency seeks to have this agreement with the Union be in line with not only local public schools in North Carolina, but also in line with three out of the five union contracts with the Agency. The Agency also argues that the current informal practice of allowing smoking in areas near or at the dumpsters exposes employees and contractors to health risks. Finally, the Agency contends that allowing smoking on campus would be to the detriment of the health and well-being of children.

#### 2. The Union's Position

The Union opposes the proposal for a tobacco-free campus in its entirety. The Union notes that with the current informal policy, employees smoke hundreds of feet away from the building and out of view of any students. The Union also relies on a previous case

before the Panel involving this Agency.<sup>2</sup> The Union argues that all issues were essentially the same in this case as in the previous case where the Panel ordered the Agency to withdraw its proposal. The Union likewise requests that the Panel order the Agency to withdraw this proposal.

#### CONCLUSION

After carefully considering the parties' arguments and evidence on this issue, we shall order the Agency to adopt a modified version of the Union's position. The Agency shall designate a smoking location on campus. The exact location on campus will be up to the discretion of the Agency.

In reaching this conclusion, we are of the view that the current, informal policy of smoking in designated areas away from the view of students conveys to minors that smoking is not promoted or freely permitted while accommodating the legitimate interests of smokers. This designated area away from students also protects non-smokers from the adverse effects of second-hand smoke. We further note that the Agency's proposal completely banning smoking was overly broad in its scope.

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<sup>2</sup> Department of Defense, Department of Defense Education Activity, Domestic Dependent Elementary and Secondary Schools, Peachtree City, Ga. and Federal Education Association, Stateside-Region, NEA, 07 FSIP 62 (2007).

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 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the following:

Article 11, Health and Safety, Section 11

The Agency shall designate a location on campus for smoking. The exact location on campus will be up to the discretion of the Agency.

By direction of the Panel.



Mark Anthony Carter  
Chairman

December 15, 2017  
Washington, D.C.