

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

NATIONAL LABOR RELATIONS BOARD

And

NATIONAL LABOR RELATIONS BOARD UNION

Case No. 18 FSIP 017

DECISION AND ORDER¹

The National Labor Relations Board (Agency or NLRB) 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 National Labor Relations Board Union (Union or NLRB).

Following an investigation of the Agency's request for assistance, which involves the negotiation of ground rules for the Agency's headquarters office relocation, the Panel concluded that this impasse should be resolved through a Written Submissions procedure with the opportunity for rebuttal statements. The parties were informed that, after considering the entire record, the Panel would take whatever action it deemed appropriate to resolve the dispute, which could include the issuance of a binding decision. The Panel has now considered the entire record, including the parties' final offers, written submissions, the parties' rebuttal statements, and supplemental statements.²

¹ Chairman Mark A. Carter did not participate in any portion of these proceedings.

² The Panel grants the Union's request to supplemental its rebuttal statement of position due to new information that was unavailable to the parties before their statements of positions were due.

BACKGROUND

The Agency's mission is to safeguard employees' rights to organize and to determine whether to have unions as their bargaining representative. The Agency also acts to prevent and remedy unfair labor practices committed by private sector employers and unions. The Union is a nationwide bargaining unit that represents professional and nonprofessional employees who work for the Agency's General Counsel at the NLRB headquarters office and at its regional offices, as well as a second unit of nonprofessional employees who work for the Chairman and Members at the NLRB headquarters office. The bargaining unit consists of approximately 600 to 700 employees; 50 to 60 of which are impacted by this dispute. The parties are covered by a collective bargaining agreement (CBA) that expired in December 2016, but continues to roll over on an annual basis.

The parties engaged in bilateral negotiation sessions between May 2016 and July 2017. They then had two mediation sessions with the assistance of the Federal Mediation and Conciliation Service (FMCS) in November 2017. The parties could not resolve the dispute in mediation. Accordingly, FMCS formally released the parties on November 17, 2017. On November 21, 2017, the Agency filed a request for Panel assistance in the instant case. On February 27, 2018, the Panel asserted jurisdiction over this dispute.

ISSUE

This matter arises out of the parties' attempt to negotiate over the relocation of the Agency's headquarters office. The Union submitted ground rules proposals to the Agency. The parties reached agreement on all of the proposals in their ground rules negotiations except for one remaining issue: which party is responsible for the Union's travel, lodging, and per diem expenses should the parties reach impasse in its headquarters office relocation negotiations and the Panel directs in-person proceedings in Washington, D.C.³

³ When the Agency filed the request for assistance with the Panel, there were three contested issues. The parties resolved two of the issues.

POSITIONS OF THE PARTIES

The Union's Final Offer

In the event that the parties reach an impasse in substantive negotiations over the headquarters office relocation, and the Panel directs in-person proceedings in Washington, D.C. to resolve the bargaining impasse, the Agency will pay 100 percent of the travel, lodging, and per diem expenses for up to two Union bargaining representatives for the period that they are in travel status for any face-to-face Panel proceedings in Washington, D.C.

The Union believes that its ground rules bargaining proposal is consistent with the parties' past practice. In support, it provides several examples of the Agency agreeing to pay for the Union's travel-related expenses for in-person Panel proceedings. The Union points to mid-term bargaining over the Agency's electronic case processing system when the Agency agreed in September 2010, to pay 100 percent of the travel, lodging, and per diem expenses for up to four Union representatives in the event that the Panel ordered in-person proceedings. For term bargaining of a successor collective bargaining agreement, in May 2011, the Agency agreed to pay 50 percent, up to a maximum of \$45,000 towards the travel, lodging, and per diem expenses for the Union's bargaining team in connection with negotiations, including mediation and impasse proceedings. For mid-term bargaining over phased retirement, in December 2015, the Agency agreed to pay 50 percent of the travel, lodging, and per diem expenses for up to four Union negotiators in the event that the Panel ordered in-person proceedings.

The Union is concerned that the Agency will not be motivated to engage in bargaining with the Union because the relocation already occurred in or around July 2015. The Union argues that this removes any financial or external pressure of an impending move from the Agency to reach compromises with the Union. At this juncture, the Union expects that certain compromises over employees' terms and conditions of employment that the Agency might have otherwise deemed reasonable, will now cost more money to implement. According to the Union, this acts as a strong disincentive for the Agency to reach agreement. Therefore, the Union argues that the Agency's financial commitment in this matter is critical in eliciting its good faith participation in bargaining.

The Agency's Final Offer

Each party pays its own travel, lodging, and per diem expenses in the event they reach impasse over the headquarters negotiations, and the Panel directs in-person proceedings in Washington, D.C.

The Agency states that the Union's proposal is inequitable because it forces the Agency to assume the entire responsibility for the Union's travel-related expenses in the event that the Panel orders in-person proceedings in Washington, D.C. To support its position, the Agency points to the ground rules agreement over phased retirement when the Union agreed to partially cover travel-related expenses for in-person Panel proceeding. The Agency argues that this should serve as evidence that the Agency should not bear all of the costs associated with the Union's travel-related expenses for in-person Panel proceedings.

The Agency asserts that it has encountered significant budgetary reductions. The Agency claims that its budget was reduced from roughly \$274 million in Fiscal Year (FY) 2017 to roughly \$258 million in FY 2018. The Agency provided an affidavit from its Chief Financial Officer, Muhul Parekh. Mr. Parekh indicated that the President's FY 2019 Budget Request seeks additional reductions, and proposes to reduce the Agency's budget to \$249 million. In light of this, the Agency cut travel costs by 18 percent, and has limited travel except where absolutely necessary to continue to meet its mission.

The Agency argues that if each party is required to pay their own expenses, it will keep the parties motivated to reach agreement prior to invoking the Panel's assistance. The Agency claims that the Union's proposal places it in the untenable position of either agreeing to the Union's proposals during bargaining, or risk paying for the Union's travel-related expenses if it is not amenable to the Union's bargaining proposals and impasse leads to in-person Panel proceedings. Finally, the Agency states that if the parties choose to designate representatives outside of the Washington, D.C. area, they should each be responsible for their representatives' travel costs, as both parties have representatives in the D.C area.⁴

⁴ The Union, in its rebuttal statement, argues that two of its bargaining representatives (one being its Chief

Supplemental Information

On March 22, 2018, the Union requested that the Panel consider supplemental information because relevant information became available that was not otherwise available before the deadline for the parties' statement of positions were due on March 16, 2018; the Consolidated Appropriations Act, 2018, which provided the Agency with level funding in the amount of \$274.2 million.⁵ On March 23, 2018, the President signed the bill, which will keep the government funded for the remainder of the fiscal year - through September 30, 2018. As a result, the Agency is funded at its previous year's level; \$274.2 million.

The Agency requested that the Panel deny the Union's request to submit supplemental information. In the alternative, the Agency argued that this information should not factor into the Panel's decision due to the President's Budget Request for FY 2019 to cut the Agency's budget, which will keep the travel cuts the Agency made in place for the indefinite future.

CONCLUSION

Having carefully considered the evidence and arguments presented in support of the parties' positions, as well as the supplemental information provided by the Union that was not available to the parties prior to their submission deadline, we find that the Agency's proposal is the most equitable solution to resolve the impasse. In this regard, the parties should be responsible for their respective travel-related expenses in the event that the Panel orders in-person proceedings in Washington, D.C. over their headquarters office relocation bargaining. Based on the foregoing, the Panel orders that the parties adopt the Agency's final offer.⁶

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

Negotiator) who are located outside of Washington, D.C. have historical knowledge of this matter, and are invaluable to both parties, as they have been involved in the negotiations over the headquarters office move since at least 2014.

⁵ See Public Law No. 115-141.

⁶ With slight modification.

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 Agency's final offer to resolve the impasse:

Each party pays its own travel, lodging, and per diem expenses in the event they reach impasse over the headquarters negotiations and the Panel directs in-person proceedings in Washington, D.C.

By direction of the Panel.

A handwritten signature in cursive script, appearing to read "F. Vincent Vernuccio".

F. Vincent Vernuccio
FSIP Member

April 6, 2018
Washington, D.C.