

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

Department of the Navy
Navy Supply Systems Command

and

American Federation of Government
Employees, Local 1156

Case No. 18 FSIP 030

DECISION AND ORDER

The Department of the Navy, Naval Supply Systems Command (NAVSUP) filed a request for assistance with the Federal Services Impasses Panel (Panel) to consider a negotiation impasse over the remaining proposals in the negotiations of the implementation of the new performance management system, called the Defense Performance Management and Appraisal Program (DPMAP) (DoD Instruction 1400.25, Vol. 431), under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §7119, between it and the American Federation of Government Employees, Local 1156 (Union).

The Defense Performance Management and Appraisal Program was developed cooperatively at the national level by the Department of Defense (DoD) management officials, employees and labor union representatives in response to requirements in the National Defense Authorization Act of 2010. Once fully deployed, it will cover most of the civilian workforce DoD-wide; approximately 600,000 civilian employees. DPMAP is designed to foster a high-performance culture and encourage increased employee engagement and effectiveness by linking organization and mission goals to individual performance, ensuring regular communication between employees and supervisors, acknowledging successes, addressing shortfalls as they occur, and making meaningful distinctions in levels of performance. Deploying a consistent program to a vast majority of civilians across DoD also enables more seamless transition for employees as they move between agencies and components during career progression and workforce restructuring.

BACKGROUND

The Department of Navy, Naval Supply Systems Command (NAVSUP) is located in Mechanicsburg, PA, which is in Central Pennsylvania on the northeastern boundary of Mechanicsburg in Hampden Township. NAVSUP's mission is to deliver logistics and support to the Navy and Joint warfighters. They manage supply chains that provide material for Navy aircraft, surface ships, submarines and their associated weapons systems. They provide centralized inventory management for the Navy's non-nuclear ordnance stockpile. They provide a wide range of base operations and waterfront logistics support services, coordinating material deliveries, contracting for supplies and services, and providing material management and warehousing services. The impacted staff in Mechanicsburg provides base operating support to the more than 150 buildings in Mechanicsburg: administrative, warehouse and base housing.

AFGE, Local 1156 represents civil servants employed at NAVSUP in Mechanicsburg and other locations worldwide. In total, AFGE, Local 1156 represents more than 20 separate bargaining units, totaling approximately 2,300 employees in Mechanicsburg and other locations. AFGE, Local 1156 represents the 5 bargaining units in Mechanicsburg impacted by this change.

1. Naval Supply System Headquarters – The bargaining unit is comprised of all non-professional General Schedule employees of NAVSUP. There are approximately 121 employees in this bargaining unit. This bargaining unit does not have a collective bargaining agreement (CBA), rather the conditions of employment applicable to it are contained in numerous Instructions and Memoranda of Understanding (MOUs).
2. Naval Supply Systems Command, Weapons Systems Support – This bargaining unit is comprised of all non-professional and professional employees of the Naval Supply Systems Command, Weapons Systems Support (NAVSUP WSS) unit. There are approximately 1,739 employees in this bargaining unit. This bargaining unit was consolidated from a number of other fragmented units in December 2016. AFGE, Local 1156 was designated by AFGE National to serve as the representative for the consolidated unit at this time. The parties have not yet negotiated a new CBA for the consolidated unit.
3. Naval Supply Systems Command, Business Systems Center – This bargaining unit is comprised of all non-professional and professional employees of the Naval Supply Systems Command, Business Systems Center in Mechanicsburg, PA. There are approximately 389 employees in this bargaining unit. The CBA for this unit expired in July 2010; however, the parties generally continue to adhere to the terms and provisions of the expired CBA.

4. Naval Supply Systems Command, Global Logistics Support, Ammunition Function – This bargaining unit is comprised of all non-professional employees employed by the Naval Supply Systems Command Global Logistics Support (NAVSUP GLS) Site in Mechanicsburg, PA, and all GLS Ammunitions function employees nationwide. There are approximately 71 employees in this bargaining unit. The CBA for this unit expired in December 1993; however, the parties generally continue to adhere to the terms and provisions of the expired contract.
5. Naval Acquisition Career Center – This bargaining unit is comprised of all non-professional employees employed by the Naval Acquisition Career Center, located in Mechanicsburg, PA. There are approximately 6 employees in this bargaining unit. The CBA for this unit expired in April 2017; however, the parties generally continue to adhere to the terms and provisions of the expired contract.

In May 2016, the Agency notified the Union of its intent to implement the Defense Performance Management and Appraisal Program. While the parties met several times to bargain the implementation of DPMAP, the parties were unable to come to an agreement so they engaged the services of the Federal Mediation and Conciliation Services (FMCS). After engaging in several mediated sessions, there still remained a number of disputed proposals. NAVSUP filed this request for Panel assistance. Following an investigation of the Agency's request for assistance, the Panel determined, in accordance with its regulations, 5 C.F.R. § 2472.7, to assert jurisdiction over the dispute and directed the parties to submit their dispute to an Informal Conference. The parties were advised that if no settlement was reached during the Informal Conference, the Panel would be notified of the status of the dispute. After considering the written submissions by the parties, the Panel would then take whatever action it deemed appropriate to resolve the impasse, which would include the issuance of a Decision and Order. Although the parties made substantial movement and resolved a number of the outstanding issues in the Informal Conference, there remained five proposals for the full Panel to resolve. The parties were ordered to submit written submissions to the Panel for final resolution of the impasse.

ISSUES

1. Proposal #9 - The attendance of a Union representative in a formal performance meeting where there is more than one manager present.
2. Proposal #10 – The obligation of the manager to consider the employee's rebuttal to the rating of record.
3. Proposal #33 – The right of the employee to have a Union representative attend a meeting regarding unacceptable performance.

4. Proposal #34 – The right of the employee to have a Union representative attend a meeting where the supervisor presents and discusses the PIP with the employee. The right of the Union to receive travel and per diem to attend the meeting.
5. Proposal #43 – The right of the employee to have a Union representative attend all subsequent PIP meetings.

PROPOSALS AND POSITION OF THE PARTIES (Bold language indicates lack of agreement)

1. Union Proposal #9

Formal performance meetings will be held in person between the rating official and the employee, except when not possible. **In the unusual circumstance that more than one agency official participates in a formal performance meeting with an employee, the employee will be provided sufficient time to arrange for a union representative to attend, if they so choose.**

Management Proposal #9

Formal performance meetings will be held in person between the rating official and the employee, except when not possible. **If the employee requests to have a Union representative present for this meeting, the rating official may consider and permit attendance by a representative on a case-by-case basis.**

The dispute centers on whether, in certain circumstances (i.e., more than one agency official participates in the meeting), at the employee's request, a Union representative will be permitted to attend a performance meeting between an employee and his/her rating official.

Union's position -

The Union believes that having more than one manager in the meeting, which is normally just between the employee and their supervisor, critically changes the nature and dynamic of the meeting for the employee. And, like formal meetings under the Statute (§7114(a)(2)(B)), the employee should be entitled to have their Union representative present if they are uncomfortable. The Union notes that the provision, as the Union has proposed it, has been adopted by other DOD functions in their implementation of DPMAP, with no issues.

Agency's position –

The Agency asserts that having an additional manager in the meeting to discuss an employee's performance is rare, but could be useful in certain circumstances, such as a transition from a previous manager to a new manager. The Agency argues that if such a rare circumstance of having a second manager in the meeting were to occur, the Union's presence in the meeting could make that meeting unnecessarily adversarial and would frustrate the purpose of having an open dialogue between the employee and their manager. The Agency's proposal maintains management's discretion to approve an employee's request to have a Union representative present as the manager deems appropriate.

2. Union Proposal #10

Employees will be able to see the performance related information about them that is kept in the system. They will have a reasonable amount of time during their regular work schedule to enter their own achievements and successes into the system. The Performance Management Tool will not permit anyone to change an employee's entries. Rebuttals to any information employees believe is inaccurate shall be made in an email to the rating official no later than seven days after receipt of requested supporting documentation. **The rating official will provide an email response addressing the employee's specific rebuttal concerns prior to the effective date of the rating of record.**

Agency Proposal #10

Employees will be able to see the performance related information about them that is kept in the system. They will have a reasonable amount of time during their regular work schedule to enter their own achievements and successes into the system. The Performance Management Tool will not permit anyone to change an employee's entries. Rebuttals to any information employees believe is inaccurate shall be made in an e-mail to the rating official no later than seven (7) days after receipt of requested documentation to support the rating.

The dispute centers on whether rating officials shall be required to e-mail a response to an employee who submits rebuttal information pertaining to their performance appraisal posted by the supervisor in the system, specifically addressing any concerns raised by the employee, before the performance appraisal becomes final.

Union position -

The Union's proposal would require a manager to respond formally to the employee. The Union is seeking to ensure that the supervisor receives and carefully considers the employee's rebuttal to the performance appraisal prior to making the appraisal final. The Union believes that this is consistent with the DOD Instruction that requires the consideration of the employee's input in the appraisal process. That Instruction cited by the Union allows the employee to give written input in the review of their performance. The Instruction also provides that the supervisor must consider that input and that input will become a part of the employee performance file. However, the Union is attempting to create an opportunity for the employee to provide feedback and the supervisor to respond to that feedback AFTER the appraisal is posted in the system, making the appraisal not yet final.

Agency position -

The Agency's proposal would not require a specific formal response by the supervisor after the appraisal has been posted in the system, prior to making the rating of record final. The Agency's position is that while the employee is entitled to submit information for consideration by the supervisor in writing the appraisal, they aren't entitled to engage in rebuttals with the supervisor prior to making the rating of record final. And, the Agency doesn't believe that the additional rebuttal exchange is necessary. If an employee ultimately disagrees with his or her performance rating or the employee believes that the supervisor has not given the employee's submission sufficient consideration, the employee has the option of challenging the rating through the parties' negotiated grievance procedure. There is no need in creating an additional procedure for the employee to challenge the supervisor's assessment.

3. Union Proposal #33

It is the responsibility of the Agency to monitor employee performance throughout the rating period. If at any time during the rating period the rating official determines that an employee is performing at an unsuccessful level in one or more critical elements, the rating official will call for a meeting with the employee to discuss the employee's performance. **The employee will be informed of the right to request that a Union representative also attend this meeting.**

Agency Proposal #33

It is the responsibility of the Agency to monitor employee performance throughout the rating period. If at any time during the rating period the rating official determines that an employee is performing at an unsuccessful level in one or more critical elements, the rating official will call for a meeting with the employee

to discuss the employee's performance. **If the employee requests to have a Union representative present for this discussion, the rating official may consider and permit attendance by a representative on a case-by-case basis.**

The dispute centers on whether employees meeting with their rating official to inform them that their performance has dropped to an "unsuccessful" level in one or more critical elements will be allowed to have a Union representative at this meeting.

Union position –

The Union's proposal would require management to allow an employee to bring a Union representative to a counseling meeting where the supervisor will be discussing the employee's unacceptable performance. The Union argues that two of the four units that are represented in this impasse currently have language in their performance evaluation policy that allows for the Union's attendance at these meetings. There is no evidence that the Union's presence in those meetings in the past has been disruptive. Instead, the Union argues that their presence helps to facilitate communication between management and the employees as these meetings can be tense and adversarial.

Agency position –

The Agency's proposal would not create a strict entitlement to representation even if requested, but would instead require the rating official to consider and permit attendance at the meeting by a Union representative on a case-by-case basis. The Agency continues its argument that these performance meetings are intended to facilitate open and constructive communications between an employee and their supervisor. The Agency believes that having the Union present could create an adversarial atmosphere in the meeting.

4. Union Proposal #34

The rating official, supervisor (if different from the rating official), employee, and if requested, a Union representative, will meet to identify the specific problem, determine the root cause, and explore ways to resolve the problem. Travel and per diem expenses for bargaining unit Union representation will be split fifty/fifty between Management and the Union. Local representatives will be used to the maximum extent possible.

Agency Proposal #34

If at any time during the rating period the rating official determines that an employee is performing at an unsuccessful level, **the rating official will develop**

a plan to give the employee an opportunity to improve performance during the rating period. The rating official will hold a meeting with the employee to address deficiencies and review the plan. **If the employee requests to have a Union representative present for this discussion, the rating official may consider and permit attendance by a representative on a case-by-case basis.**

There are two disputes in these proposals. The first involves the Union's involvement in creating the performance improvement plan (PIP) after the employee has been informed that their performance is unacceptable and the second involves the Agency paying travel and per diem for the Union representative to attend the meetings.

Union position –

The Union argues that it is not interested in developing the content of the plan or negotiating the plan, but would like to be involved in helping the employee and the supervisor with the discussions about the plan developed by the supervisor. Similar to what the Instructions require, the Union believes that the Union's presence will help promote an open, more focused dialogue between the employee and their supervisor. The Union emphasizes that their involvement will only become triggered when the employee requests to have their Union representative present. The Union sees their role as helping to explain things to the employee, improving the communications and increasing the likelihood of the employee's success in improving their performance.

In their Written Submission, the Union did not address the need for travel and per diem to support their participation at these meetings. The Union offered in the Informal Conference that this provision is necessary because they have the right to select their representative and the Union covers a large geographic territory, supporting a dispersed bargaining unit.

Agency position –

The Agency's proposal would specify that rating officials are responsible for developing employee PIPs, and would permit employees to have Union representatives at PIP meetings only on a case-by-case basis, at the Agency's discretion. The Agency recognizes that the Union clarified their role in these meetings at the Informal Conference (i.e., to help explore ways to resolve the problem), but continued to believe that the Union's involvement at this stage of the performance management process, before any formal action has been taken against the employee, is not appropriate. The Agency is unwilling to create a strict entitlement to Union representation, but rather would preserve management's discretion to approve or reject such a request from an employee on a case-by-case basis.

As for the requirement that the Agency provide travel and per diem for the Union representative, the Agency asserts that the proposal is contrary to section 4 (a)(iv) of President Trump's May 25, 2018-Executive Order: Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use, which specifically prohibits reimbursement of expenses incurred performing "non-agency business" unless required by law or regulation.

5. Union Proposal #43

If the employee has chosen to be represented by the Union, **a Union representative has the right to be present at all PIP¹ progress meetings with the employee.**

Agency Proposal #43

If the employee requests to be represented by the Union for a performance related meeting, **the rating official may consider and permit attendance at such meetings by a representative on a case-by-case basis.**

The dispute centers on whether employees are entitled to Union representation during all performance related (PIP) meetings with Management.

Union position –

The Union's proposal is intended to be read in the context of the preceding performance improvement proposals, which address meetings where deficient performance has been identified by Management. The Union intends this proposal to be limited to meetings related to the PIP, not to all performance meetings (as the Agency inferred in the Informal Conference). The Union's proposal would require the Agency to permit Union representation at all PIP-related meetings in which employees request representation. The Union believes they could be helpful in facilitating communications as the employee and supervisor meet to improve deficient performance.

Agency position –

The Agency's proposal would permit its rating officials to allow Union representation at such meetings on a case-by-case basis, but would not create a strict employee entitlement to such representation in all circumstances. The Agency does not believe the Union's presence in all of these will be helpful because it is the employee and the supervisor that are in the best position to discuss deficiencies and the best

¹ This clarification was added at the Informal Conference.

ways to remedy those deficiencies. The Agency believes that the presence of Union representatives at some of these meetings could set an adversarial tone that would likely prove more disruptive than constructive.

CONCLUSION

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find as it relates to Proposal #9 - the attendance of a Union representative in a formal performance meeting where there is more than one manager present, a performance review meeting should be an open dialogue between the employee and their immediate supervisor. Adding additional representatives to the meeting should not change the nature of the dialogue or the intent of the meeting. As this meeting is not intended to be a formal meeting under the Statute (§7114(a)(2)(B)), the parties should not make it one by adding additional representatives on either side. Should the Agency determine, on the rare occasion, that an additional Agency representative is necessary, the Agency should ensure that the employee understands why, in such a very rare occasion, the Agency would have someone other than the employee's immediate supervisor in the performance review meeting. If the employee would like to bring a representative with them as well, the Agency may grant that request, where appropriate. Both representatives are responsible for ensuring that their presence in the meeting does not frustrate the purpose of the meeting; to promote open dialogue between the employee and their immediate supervisor.

We find as it relates to Proposal #10 – the obligation of the manager to consider the employees rebuttal to the rating of record, the Union's proposal would create an additional and unnecessary procedure to challenge the supervisor's assessment. While the Union is seeking to ensure that the employee's self-assessment has been properly considered, the procedure that the Union has proposed creates an additional burden on the supervisor to also consider the employee's rebuttal to the supervisor's assessment, creating a review and consideration of two employee assessments and causing a delay in finalizing the performance assessment (final rating of record). We believe that adding an additional assessment review is an unnecessary step to ensuring that the supervisor has met the primary obligation of reviewing the employee's self-assessment. If the employee believes that in creating the final rating of record, the supervisor did not appropriately consider their self-assessment, as required by the performance program requirements, the employee could grieve any disagreement with the appraisal through the negotiated grievance procedure.

We find as it relates to Proposal #33 – the right of the employee to have a Union representative attend a meeting where the supervisor is notifying an employee that their performance has dropped to an unacceptable level, these meetings can be an opportunity for the employee and their immediate supervisor to achieve a common understanding of how that employee's performance is being assessed by their

supervisor. Clearly and effectively communicating with an employee the supervisor's expectations of their performance is one of the most important and ongoing obligations of the supervisor. These meetings should be an opportunity to facilitate an open dialogue between the employee and their immediate supervisor about an employee's performance, which becomes even more important if the supervisor believes that employee's performance is slipping below an acceptable level. As with Proposal #9, above, adding an additional representative to the meeting should not change the nature of the dialogue or the intent of the meeting. If the employee would like to bring a representative with them to the meeting, the Agency may grant that request, but only where appropriate. Both representatives are responsible for ensuring that the presence of the employee's representative in the meeting does not frustrate the purpose of the meeting; to promote clear and open dialogue between the employee and their immediate supervisor.

We find as it relates to Proposal #34 – the right of the employee to have a Union representative attend the meeting where the supervisor presents and discusses the PIP with the employee, and the right of the Union to receive travel and per diem to attend the meeting, that meeting is a critical opportunity to present the written PIP, inform the employee of the critical element(s) in which the employee is failing, what is needed to bring performance up to an acceptable level, what assistance will be provided, and the consequences of failing to improve during the opportunity period. As with #33, above, adding an additional representative to the PIP meeting should not change the nature of the dialogue or the intent of the meeting. If the employee would like to bring a representative with them to the meeting, the Agency may grant that request, but only where appropriate. Both representatives are responsible for ensuring that the presence of the employee's representative in the meeting does not frustrate the purpose of the meeting; to promote clear and open dialogue between the employee and their immediate supervisor. It is unnecessary for us to address the travel and per diem for the Union official to attend these meetings, as the Agency has no obligation to grant an employee's request for a representative to be present.

We find as it relates to Proposal #43 – the right of the employee to have a Union representative attend all subsequent PIP meetings, those follow up meetings are opportunities for the employee and their immediate supervisor to continue ongoing discussions about the employee's performance in relation to the performance expectations established in the performance plan, and, specifically, in the PIP. As with Provision #33 and Provision #34, above, adding an additional representative to the PIP meeting should not change the nature of the dialogue or the intent of the meeting. If the employee would like to bring a representative with them to the meeting, the Agency may grant that request, but only where appropriate. Both representatives are responsible for ensuring that the presence of the employee's representative in the meeting does not frustrate the purpose of the meeting; to promote clear and open dialogue between the employee and their immediate supervisor.

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 § 2471.11(a) of its regulations, hereby orders the parties to adopt the following to resolve the impasse:

Proposal #9 - the attendance of a Union representative in a formal performance meeting where there is more than one manager present. The Panel orders the parties to adopt the Agency's proposal.

Proposal #10 – the obligation of the manager to consider the employee's rebuttal to the rating of record. The Panel orders the parties to adopt the Agency's proposal.

Proposal #33 – the right of the employee to have a Union representative attend a meeting regarding unacceptable performance. The Panel orders the parties to adopt the Agency's proposal.

Proposal #34 – the right of the employee to have a Union representative attend the meeting where the supervisor presents and discusses the PIP with the employee. The right of the Union to receive travel and per diem to attend the meeting. The Panel orders the parties to adopt the Agency's proposal.

Proposal #43 – the right of the employee to have a Union representative attend all subsequent PIP meetings. The Panel orders the parties to adopt the Agency's proposal.

By direction of the Panel.



Mark Carter
Chairman

June 28, 2018
Washington, D.C.