

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

National Council of Field Labor Locals

and

Department of Labor  
Office of Workers' Compensation Program

Case No. 18 FSIP 060

**DECISION AND ORDER**

The National Council of Field Labor Locals (NCFLL or Union) filed a request for assistance with the Federal Services Impasses Panel (Panel), under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §7119, to consider a negotiations impasse between it and the Department of Labor, Office of Workers' Compensation Programs (OWCP or Agency or Management) over the relocation of bargaining unit employees in the Division of Energy Employees Occupational Illness Compensation (DEEOIC) in the Seattle, WA District office.

The Agency is a component of the US Department of Labor. The Agency's mission is to protect the interests of workers who are injured or become ill on the job, their families and their employers by making timely, appropriate, and accurate decisions on claims, providing prompt payment or benefits, and helping injured workers return to gainful work as early as is feasible. The impacted bargaining unit employees were spread out across the 9<sup>th</sup> floor office in Seattle. Management decided to co-locate impacted employees on the 9<sup>th</sup> floor, based upon their team assignments. In total, there were 10 bargaining unit employees and 1 manager proposed to be moved. The parties are governed by a master collective bargaining agreement (CBA) that was enacted on October 1, 2012. The CBA expired in October 2018. Management has initiated bargaining on the successor CBA. Until agreement is reached on the successor CBA, the terms of the October 2012-CBA remain in effective. The CBA is silent on the method and manner for moving employees; however, Article 11 – Space Management of the CBA addresses work space for impacted bargaining unit employees. Article 11 provides that a process will be engaged between the Agency and the Union when

seeking changes in office space; i.e., negotiations. And, Article 4 of the CBA provides the process for negotiations over midterm changes.

## **BACKGROUND**

Consistent with the procedures in Article 11, on November 1, 2017, there were informal discussions between the District Director and the Union leadership regarding the Agency's interest in moving the employees to accommodate the interest in co-locating groups. On December 4, 2017, the Union invoked formal bargaining over the proposal to relocate employees. On March 27, 2018, formal negotiations began and the parties exchanged proposals. On May 9, 2018, the parties engaged in mediation with the Federal Mediation and Conciliation Services (FMCS). Having not reached agreement through the mediation process, on June 11, 2018, the Union filed this request for assistance.<sup>1</sup>

On September 11, 2018, the Panel declined jurisdiction over some of the proposals (i.e., Union #2; #3; #7; #9 and #10) because the Agency raised colorable duty to bargain claims. The Panel asserted jurisdiction over some of the proposals (i.e., Union #1/Agency#1; Union #4/Agency #2&3; Union #5/Agency #5; and Union #6/Agency #4) and ordered the parties to submit to a written submission procedure. The parties were given until the close of business on October 5, 2018 to submit their statement of positions (SOP); with rebuttals due October 12, 2018. The Agency representative requested an extension. That extension was granted to both parties. The parties were informed on September 21, 2018 that the new due date for submissions of their SOP was October 12, 2018, with rebuttals due October 19, 2018. Despite the extension, the Union submitted its SOP on October 4, 2018 and the Agency submitted its SOP on October 5, 2018. On October 12, 2018, the Union representative contacted the Panel, seeking an extension of the rebuttal due date because the Union representative was denied official time under the CBA by the supervisor to prepare the rebuttal statement. The request for a one-week extension was granted. The new due date for the rebuttal would be 5 pm EST on October 26, 2018. The Agency submitted its rebuttal on October 26, 2018 at 3:25 pm EST. The Union submitted its rebuttal on October 26, 2018 at 5:16 pm, 16 minutes after the deadline. The Agency sent an email to the Panel pointing out the lack of timeliness for the record. The Union responded with a reminder that the Agency denied the Union representative official time to work on the rebuttal. Despite repeated requests by the Union to get the official time approved, the issue was not resolved. The concerns of the parties have been noted.

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<sup>1</sup> As of the filing of the request for assistance, the employees had already been unilaterally moved to new office spaces.

## ISSUES

1. Union Proposal #1/Agency Proposal #1 – Employees impacted by the change.
2. Union Proposal #4/Agency Proposal #2 and #3 – Selection of new workspace.
3. Union Proposal #5/Agency Proposal #5 – Movement of personal belongings.
4. Union Proposal #6/Agency Proposal #4 – Allowing some employees to not move.

## PROPOSALS AND PARTIES' POSITIONS

1. Employee Impacted by the Change/MOU

Union's proposal 1 – The list of affected BUEs in MANAGEMENT'S "Implementation – October 30, 2017" Space Management/relocation identify the only BUEs to be included in the relocation. BUEs not previously included in the "Implement – October 30, 2017" Space Management relocation list may be addressed via the CBA, Article 11, CBA Article 4, Informal bargaining, formal bargaining, mediation or impasse.

Agency's proposal 1 – The attached list of 10 BUEs are to be included in the relocation (see Attachment #1). BUEs not included in Attachment 1 who may need to be relocated will be addressed pursuant to Article 11 and Article 4 of the CBA.

The parties are in agreement that the final Memorandum of Understanding (MOU) will impact the movement of the bargaining unit employees who were included in the original notice to the Union over the change. The parties are also in agreement that any additional bargaining unit employees that need to be moved will be addressed under a new change proposal under the CBA. Both parties recognize the limits of these negotiations, as well as the process (under Article 11 and Article 4 of the CBA) that should be followed if there are other changes. The problem here is the Agency's alleged disregard for their bargaining obligations under the CBA and the Statute. The Union believes the Agency has and will continue to violate the CBA and Statute by unilaterally moving employees without fulfilling its bargaining obligations. That fear is reinforced by the Agency's rebuttal statement, the Agency states, "[D]ue to the fact that this matter has been going on for almost a year, the Agency has started the informal process of relocating other employees. Nothing in this proceeding, or any other, serves to limit Management's right to assign work."

## 2. Selection of New Workspace

Union proposal #4 - In an effort to utilize all available technology and avoid unnecessary financial costs the PARTIES agree that the BUEs who desire to relocate their workspaces should be immediately allowed to relocate to more convenient, practical and suitable workspace. The voluntarily relocating BUE may select any workspace in the new unit based upon seniority using the EEOD of the agency (OWCP). The Union will be the sole arbiter of any duplicate EODD.

Agency proposal #2 - In an effort to utilize all available technology and avoid unnecessary financial costs, the Parties agree that the affected BUEs will relocate to a more convenient, practical and suitable workspace within their designated Claims Unit. Individual BUEs moving from their current Claims Unit to a new Claims Unit is provided in Attachment #1. The designated Claims Units are pictured in the attached space layout (see Attachment #2). The relocating BUE may select any vacant workspace in the new Claims Unit based upon seniority using the enter on duty (EOD) date of OWCP. The Union will be the sole arbiter of any duplicate EOD date.

Agency proposal #3 - In the event that a BUE who is currently occupying a workspace with a window is relocated as a result of this MOU, the Parties agree that a BUE within that existing Claims Unit who does not have a workspace with a window may choose to select the newly vacant workspace with a window. The Parties agree that if the BUE moving into the Claims Unit has an EOD date before any of the BUEs in that Claims Unit who do not have a workspace with a window, the relocating BUE may select the vacant workspace with the window.

While the method of determining cubicle selection (i.e., seniority based upon the entry on duty date into the OWCP Agency) is not in dispute, the available option for the bargaining unit employee to select from is in dispute. Under the Union's proposal, impacted bargaining unit employees would be allowed to select from among any workspace in the new unit based upon seniority. The Agency's proposal would allow the impacted employees to select from any currently vacant workspace in the unit; avoiding the need to bump a non-impacted employee from their workstation. In its submission, the Agency has withdrawn its proposal #3 regarding employees occupying a workspace with a window. The Union did not address occupancy of the window space in its submissions. As that proposal addresses the ability of a non-impacted bargaining unit employee to move to another vacant cubicle, it isn't necessary for the Panel to address that proposal in this request for assistance.

In its submission, the Union argues that the past practice between the parties is to allow employees to select workspace base upon seniority, with no limitation of the current vacancy of the space. In other words, the Union asserts that bumping other employees has been the past practice in accomplishing office moves. Management is seeking to relocate employees so that they are situated with their respective teams, but

to accomplish that relocation with minimal disruption to the current occupants of cubicles.

The Union offers a number of reasons why allowing employees to maximize their seniority by allowing them to bump a less senior employees, who is otherwise unaffected by this office move, is the best option for accomplishing this move, including the need to ensure compliance with reasonable accommodation needs, past practice of bumping, and not supporting management's bad faith dealings with the Union. The Agency argues that the Union offers no supporting evidence that the bumping of non-impacted employees has occurred in the past. The Union also argues that relocating employees is a waste and counterproductive to accomplishing the mission, however, their proposed process would appear to be more disruptive. The Agency offers a number of reasons why this move should be accomplished with minimal disruption, including consistency with prior moves, cost of time spent moving, level of disruption and impact on morale, and avoiding setting costly precedent. The Union argues that the affidavits offered by the Agency as supporting evidence that the prior moves occurred by moving to vacant space were not sworn declarations and, therefore, should be disregarded by the Panel. Also, the one past move offered by the Agency involved a bargaining unit represented by another labor local, not Local 2336.

Past practice can be relied upon by the parties to defend the interpretation of the current CBA, however, the parties are free to bargain a change to past practice through the bargaining process. Both parties are relying on past practice to support the current move, however, the parties (or the Panel through a directed order) can change that practice through this bargaining.

### 3. Movement of Personal Belongings

Union proposal #5 - The BUEs will pack up and move their own personal belongings in management provided boxes. MANAGEMENT will move DOL OWCP EEOICP equipment/files/ DOL items, upon 24 hour notice to the BUE. MANAGEMENT will move the personal items in the presence of the BUEs after notice. MANAGEMENT will work to accommodate the BUEs telework schedule regarding movement of DOL OWCP EEOICP equipment and personal belongings.

Agency proposal #5 - The BUEs will pack their own personal belongings in boxes provided by OWCP. OWCP will provide one-day notice to the affected BUE of the upcoming move. OWCP will move the BUEs personal belongings into their new workspace. OWCP will ensure that IT equipment including monitors, telephones, and any other DOL purchased items, will be moved to the BUE's new workstation. OWCP will try to accommodate the BUEs telework schedule regarding the move of IT equipment and other DOL purchased items.

The dispute involves the timing of actually moving the employee's equipment and packed up personal belongings. The Union proposes that the employee move their own personal belongings or the Agency can move them with the employee present. The Agency is seeking the flexibility to move the items on a day when the employee may not be in the office (e.g., telework day) to minimize disruption to the employee's work. Therefore, the Agency proposes that they move the employee's belongings, with or without the employee's presence, with one days notification.

#### 4. Allowing Some Employees to Not Move

Union proposal #6 – MANAGEMENT and the UNION agree that affected BUEs who do not desire to relocate to new workspaces, and who are within close geographical proximity to their newly proposed units should be allowed to remain within their existing workspaces in an effort to avoid loss of productivity, reduce unnecessary financial expenditures and circumvent potential injuries.

Agency proposal #4 - The Parties agree that affected BUEs who are within one (1) to two (2) workstations of their designated Claims Unit may be allowed to remain in their existing workspaces in an effort to avoid loss of productivity, reduce unnecessary financial expenditures and circumvent potential injuries.

The Union seeks to minimize disruption by allowing some of the impacted employees to not have to move. The Agency's proposal represents a concession offered by the Agency to allow some of the bargaining unit employees to remain in their current cubicles, if the Claims Unit that they would be moved to would have been within 2 workstations away.

## CONCLUSION

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find as it relates to Issue #1 – Employees impacted by the change, that the parties should be reminded that this MOU will apply to the move of the employees who were listed in the attachment to the notification. Should the Agency decide to move other bargaining unit employees, they may have obligations under the CBA and the Statute they will need to meet before implementing change.

As it relates to Issue #2 – Selection of new workspace, both parties argued that they should avoid waste and minimize disruption in accomplishing these office moves. The Panel agrees and believes that the least disruptive of the strategies is to avoid bumping non-impacted employees; limit the movement into workspaces that are currently vacant.

As it relates to Issue #3 – Movement of personal belongings, the option of having their personal belongs moved should be given to the employee. If the employee would

prefer to move their own personal belongings, they should be granted time to do so, but within a reasonable amount of time established by the Agency. If they want their belongings moved, the Agency should move them at the same time they are scheduling to move the Agency's equipment.

As it relate to Issue #4 – Allowing some employees to not move, the Panel believes that allowing the employees to completely eliminate any disruption by voiding the Agency decision to move them goes too far. That option would result in limiting management interest in improving the delivery of the mission by co-locating teams. On the other hand, allowing some employees to not move would provide both some financial relief for the Agency (by not having to pay for a few moves) and some relief from the disruption of moving for some employees.

## 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:

1. The 10 employees included in the notice are subject to relocation under the Memorandum of Understanding (see Attachment #1). Employees not included in the notice may be addressed via the CBA and the Statute.
2. The employees will relocate to a workspace within the designated Claims Unit. The relocating employee may select any vacant workspace in the new Claims Unit based upon seniority using the enter on duty (EOD) date of OWCP. The Union will be the sole arbiter of any duplicate EOD date.
3. The employees will pack their own personal belongings in boxes provided by the Agency. The Agency will provide one-day notice to the employee of the upcoming move. If the employee chooses, the Agency will move their boxed personal belongings into their new workspace when the Agency moves the Agency equipment. The employee need not be present for the move. If the employee prefers, they may move their own personal belongings, but within a reasonable amount of time established by the Agency. IT equipment, including monitors, telephones, and any other DOL purchased items, will be moved by the Agency to the employee's new workstation. In order to minimize disruption, the Agency will try to accommodate the employee's telework schedule regarding the move.
4. Employees who are within two (2) workstations of their designated Claims Unit may be approved to remain in their existing workspaces.

By direction of the Panel.

A handwritten signature in black ink, appearing to read 'M.A. Carter', with a stylized flourish at the end.

Mark A. Carter  
Chairman

November 14, 2018  
Washington, D.C.