

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF DEFENSE, DOMESTIC
DEPENDANT ELEMENTARY AND
SECONDARY SCHOOLS

And

ANTILLES CONSOLIDATED EDUCATION
ASSOCIATION

Case No. 18 FSIP 062

DECISION AND ORDER

This request for assistance concerning a new awards policy was filed by the Antilles Consolidated Education Association (Union) under §7119 of the Federal Service Labor-Management Relations Statute (the Statute). Following investigation of the request for assistance, on September 11, 2018, the Federal Service Impasses Panel (Panel or FSIP) determined that the dispute should be resolved through a Written Submissions procedure with an opportunity for rebuttal statements. The parties timely submitted their arguments and accompanying documents. The record is closed and the Panel issues the following decision in accordance with 5 U.S.C. §7119 and 5 C.F.R. §2471.11 of its regulations.

BACKGROUND

The mission of the Department of Defense, Domestic Dependent Elementary and Secondary Schools (Management or Agency) is to educate the dependents of U.S. military personnel and Federally-employed civilians. The Agency operates schools in seven states, as well as Guam, and the site in the current case, in Puerto Rico. In Puerto Rico, there are four schools. The Union represents the bargaining unit at these locations, consisting of approximately 270 professional employees who hold positions such as Classroom Teacher, Guidance Counselor, Psychologist, Education Technologist, Librarian, Media Specialist, Nurse, and Substitute Teacher.

The parties' last collective bargaining agreement (CBA) expired on July 24, 2015. In a Decision and Order dated January 25, 2017, (16 FSIP 052) the Panel imposed language concerning their successor CBA that the Agency declined to implement. The Union filed an unfair labor practice charge and prevailed before an Administrative Law Judge of the FLRA. The Agency filed exceptions to that decision and those exceptions are currently pending before the FLRA. This current dispute is unrelated to the parties' successor CBA controversy.

The Agency provided the Union notice in January 2018 of its intent to implement a new awards policy. The parties held 3 bilateral negotiation sessions between January and March of 2018. They received 1 day of mediation assistance from the Federal Mediation and Conciliation Services in Case No. 201811760035. The Mediator released the parties to seek Panel assistance on May 24, 2018. The Union filed this request for assistance on June 14, 2018, and the Panel asserted jurisdiction over it on September 11, 2018.

ISSUES AT IMPASSE

There are two issues presented in this dispute: (1) one proposal concerning "special act" awards for certain employees; and (2) two proposals concerning Teacher of the Year awards.

POSITIONS OF THE PARTIES

I. Special Act Awards

A. Union Proposal

The Union proposes the following:

All unit employees (including long term substitutes) who worked in the 2017-18 school year following Hurricanes Irma and Maria shall be awarded a "special act or service award" of \$3,150 for the exceptional value of benefits with extended application for their "heroic act of unusual courage of competence in an emergency connected with official employment."

The gist of the Union's proposal is that all teachers, including long-term substitutes, who worked during the 2017-18 school year after Hurricanes Irma and Maria and finished that school year should receive a one-time special act award in accordance with the awards policy. The proposed policy permits

several types of awards, including "special act awards." Supervisors may authorize such awards under the following circumstances:

This award is granted for nonrecurring contributions or accomplishments, within or outside of job responsibilities, which contribute to the efficiency, economy, or other improvement of Federal government operations. It may also be granted for a *heroic act of unusual courage or competence in an emergency connected with official employment.* (emphasis added).

It is the position of the Union that the relevant employees engaged in "heroic acts" by reporting to duty following the hurricanes. The Union argues that all local public schools and other businesses were shut down on September 18, 2017, but the four Puerto Rico schools remained open until September 19 - 1 day before Hurricane Maria made landfall. And unlike other Federal agencies in the area, Management "prioritized" reopening the schools as quickly as possible following the hurricanes. Thus, over 3 weeks later, three of the schools were opened on October 16. Due to power issues, the remaining school did not open until October 30, 2017.

Upon the schools' re-openings, the parties agreed to extend the school day, extend the school year, reschedule conferences to evenings, and agreed to reschedule professional training days to weekend and holidays. On December 6, 2017, the Agency Director wrote a letter to employees and acknowledged the "horrific impact" the hurricanes had on the employees' lives. He noted that many employees still faced challenges such as housing, clothing, and other basic supplies. The Director commended the employees for their courage in surviving the ordeal and commending them for their "efforts to bring quality teaching and learning back to [the] classrooms." Notwithstanding this praise, the Union maintains that the Agency has failed to provide any recognition for the employees' outstanding and heroic services.

The Union arrives at the figure of \$3,150 by examining other portions of the awards policy. Specifically, the proposed awards policy has an "awards matrix" that authorizes special act awards as part of a category of awards that involve employees who bestow "intangible benefits" upon the Agency. The matrix authorizes between \$25 and \$10,000 for "intangible benefit" scenarios after the consideration of various factors. As relevant, it permits awards of \$3,150 when an employee provides "exceptional" service that has "extended" application. The Union maintains that the

teachers' efforts satisfy the foregoing criteria and, as such, their special act award should total \$3,150.

B. Agency Proposal

Supervisors will be notified that they may nominate any employee for a "special act or service award" who worked in the 2017-18 school year and performed a "heroic act of unusual courage or competence in an emergency connected with official employment" connected with Hurricanes Irma and Maria. The nominations will be processed and the dollar amounts awarded shall be in accordance with [the awards policy].

The Agency acknowledges that teachers endured a significant ordeal, but it nonetheless opposes the Union's proposal requiring an automatic award. Instead, the Agency proposes that supervisors "may" nominate an employee for a special act award, and an employee's eligibility for such an award would be evaluated using the criteria that are listed in the awards policy. Management believes its proposal is reasonable because it allows for an individual assessment that, for example, would prevent one employee's contributions from being "undervalued" when compared to another employee. Moreover, its proposal would not prohibit group awards.

Management does not believe the Union's proffered rationale justifies its proposal. Although the Agency did indeed prioritize re-opening its Puerto Rico schools, it ensured that all of the schools "passed inspection for safety and habitability" before teachers even set foot in them again. And none of the teachers were on the inspection teams. Although teachers agreed to work beyond the traditional calendar year, they received a salary trade-off. In this regard, normally the teachers must work at least 190 days to receive their full salary. In exchange for working beyond the normal calendar year, the teachers received their 190-day salaries even though they ended up working less than 190 days total.

CONCLUSION

The Panel will impose the Agency's proposal. It is undoubtedly true that some Union employees suffered significant hardships as a result of Hurricanes Irma and Maria. It is also true that the Agency emphasized re-opening its schools. However, the Union did little to link these two events. That is, the Union did not present evidence or other documentation to

establish that, by virtue of working after the hurricanes, the employees engaged in "outstanding and heroic" services as defined within the awards policy. Indeed, the Union offers little in the way of analysis of the applicability of the foregoing criteria to the situation(s) the employees faced.

The Agency's proposal still allows for the possibility that individual supervisors who have familiarity with individual employee circumstances "may" nominate an employee for a special act award. That nomination would then proceed through the process established by the policy rather than the blanket approach suggested by the Union. Moreover, as the Agency insinuates, going through the process may lead a supervisor to conclude that an employee should receive *more* compensation than that being proposed by the Union. Accordingly, on balance, the Panel believes that the Agency's proposal is the better fit for resolving this dispute.

II. Teacher of the Year Award

Puerto Rico has 4 schools that fall under the Agency, and Puerto Rico itself is part of the Mid-Atlantic District. In addition to containing Puerto Rico, this district also has Virginia, New York, North Carolina, and Cuba. Including the Puerto Rico schools, the Mid-Atlantic District has a total of 55 schools. The district is one of only two districts in the continental United States. Under current practice, one individual within a district wins a Teacher of the Year award, and then he or she competes with all other districts (4 total) for a global award.

A. Treatment of Puerto Rico

A. Union Proposals

Under the awards instruction, the Union offers the following 2 proposals:

The Puerto Rico Schools shall be treated as its own "district" for the purposes of the Teacher of the Year award.

Selection of the Puerto Rico Teacher of the Year shall be made by a panel equally comprised of unit and management employees. The [Union] shall designate which unit employees shall serve on that Panel. At a

minimum, there shall be one unit employee from each school.

According to the Union, Puerto Rico was formerly treated as a separate district for purposes of the Teacher of the Year Award. Merging Puerto Rico into the Mid-Atlantic district has diluted the ability of Puerto Rico teachers to compete for this award because they must now compete with 51 other schools. The Puerto Rico schools are unique enough to be treated as a separate district because a substantial number of students speak English as a second language and because these schools are isolated from other schools.

Related to the foregoing, the Union also proposes that the selection panel for the above award should have an equal number of Management and bargaining-unit representatives. The Union should be permitted to select their individuals, and there should be one individual from each of the 4 Puerto Rico schools. The Union acknowledges that this proposal is contingent upon adoption of its proposal requiring Puerto Rico to be treated as a separate district.

B. Agency Proposal

Management opposes the Union's proposals and offers the following sole counter proposal:

[Agency] schools in Puerto Rico shall be included in the Mid-Atlantic District in accordance with [the awards policy] for the purpose of the Teacher of the Year program.

In support of its proposal, the Agency contends that its proposal codifies existing practices that have been in place for over 13 years. In 2005, Puerto Rico became part of a district along with New York and Virginia. Then in 2016, the Mid-Atlantic District was created in its current form. Adopting the Union's proposal unnecessarily fragments Puerto Rico and would not contribute to effective and efficient government operations.

The Agency offers no counter proposal for the Union's second proposal. The Union's proposed committee would exist only if Puerto Rico existed as a separate district. Because the Agency opposes this proposed fragmentation, it similarly opposes the establishment of the Union's suggested committee.

CONCLUSION

The Panel will impose the Agency's proposal. It is un rebutted by the Union that the Puerto Rico schools have been consumed by other districts for over 13 years. The Union's argument for changing the status quo is that the Puerto Rico schools are sufficiently unique to warrant such a treatment. In support of this argument, the Union maintains that the schools are isolated from other main-land schools and the students are multi-lingual. Yet, both of these facts have apparently been true for nearly 20 years. The Union does not explain why things must now change. Thus, it is appropriate to conclude that the Union's 2 proposals should be rejected in favor of Management's proposal.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under 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. Supervisors will be notified that they may nominate any employee for a "special act or service award" who worked in the 2017-18 school year and performed a "heroic act of unusual courage or competence in an emergency connected with official employment" connected with Hurricanes Irma and Maria. The nominations will be processed and the dollar amounts awarded shall be in accordance with [the awards policy].
2. [Agency] schools in Puerto Rico shall be included in the Mid-Atlantic District in accordance with [the awards policy] for the purpose of the Teacher of the Year program.



Mark A. Carter
FSIP Chairman

November 16, 2018
Washington, D.C.