

In the Matter of

DEPARTMENT OF THE ARMY
HUMAN RESOURCES COMMAND
ST. LOUIS, MISSOURI

and

LOCAL 900, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 09 FSIP 94

ARBITRATOR'S OPINION AND DECISION

Local 900, American Federation of Government Employees (AFGE), AFL-CIO (Union) 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 Department of the Army, Human Resources Command (HRC), St. Louis, Missouri (Employer).

After an investigation of the request for assistance, which arises from bargaining over the Employer's decision to conduct a transfer of function (TOF) and transfer of work due to the 2005 Base Closure and Realignment Commission's final and approved recommendations, the Panel directed the parties to mediation-arbitration with the undersigned. Accordingly, on December 9, 2009, a mediation-arbitration proceeding was held in St. Louis, Missouri, with representatives of the parties. During the mediation phase, the parties were unable to voluntarily resolve all of the outstanding issues. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and pre- and post-conference statements of position.

BACKGROUND

The Employer's mission is to provide the full spectrum of human resources programs, services and systems to develop leaders, support readiness of units and sustain the well being of our Soldiers, our Veterans, Retirees and their families. The Union represents approximately 1,000 non-professional employees at the HRC in St. Louis. The parties' collective bargaining

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agreement (CBA) covering these employees was to have expired in 1998. The parties, however, have rolled over the CBA since 1998 and continue to follow its terms and conditions.

ISSUES AT IMPASSE

The parties disagree over numerous issues involving the TOF and transfer of work of employees from St. Louis, Missouri, to Fort Knox, Kentucky, as a result of the BRAC recommendations and findings, including the length of the notice period employees who decline an offer to transfer would receive before being separated from the Federal Service.

POSITIONS OF THE PARTIES

1. The Union's Position

The following is the Union's proposed Memorandum of Agreement (MOA):

MEMORANDUM OF AGREEMENT
BETWEEN
HUMAN RESOURCES COMMAND-ST. LOUIS
AND
AFGE LOCAL 900

SUBJECT: Union Proposal for Transfer of Function (TOF) Civilian Assignment Plan and Realignment and Reorganization of the Human Resources Command (HRC)

The Human Resources Command (HRC) in St. Louis, hereinafter referred to as "the Employer" and the American Federation of Government Employees (AFGE) Local 900, hereinafter referred to as "the Union", do hereby agree, on behalf of HRC-St. Louis bargaining unit Employees, hereinafter referred to as "the Employees", to the following provisions related to the Employer's implementation of the Transfer of Function (TOF) Civilian Assignment Plan and Realignment and Reorganization of the Human Resources Commands in Alexandria, VA, St. Louis, MO and Indianapolis, IN to Fort Knox, KY.

The parties acknowledge and agree that the decision has been made to geographically move the Employer's operations from Overland (St. Louis), MO, Alexandria, VA and Indianapolis, IN to the Army Center of

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Excellence being constructed at Fort Knox, KY no later than September 11, 2011. The parties agree to the following in accordance with applicable laws and regulations:

1. The Employer agrees to offer each full-time Employee continued employment at the facility at Ft. Knox, KY, at the General Schedule (GS) grade of the position to which the Employee is assigned at the time of the offer. Employees who accept the Employer's offer of continued employment at HRC-Ft. Knox and who are subsequently promoted to a higher GS-graded position will transfer to Ft. Knox, KY at the GS grade of the position to which they were subsequently promoted.

2. The Employer agrees to afford all Employees who receive an offer of continued employment at HRC- Ft. Knox a maximum of thirty (30) calendar days to accept or decline said offer. The Employer will interpret the failure of an Employee to respond to the offer within the specified time limits as a declination.

3. Employees who decline their Transfer of Function (TOF) offer shall be afforded the following accommodations:

a. Affected Employees will receive their separation notices 120 days prior to the Command's effective date of closure (tentatively scheduled as October 2010).

b. Affected Employees would be automatically registered in the Priority Placement Program 120 days prior to the effective date of closure.

d. The Employer will provide those employees who declined their TOF offer with a statement of their rights and benefits.^{1/}

e. The Employer and the Union will jointly educate affected Employees that they may notify the Employer of their desire to move to the Fort Knox facility. The Employer agrees to give consideration to these requests.

1/ The Union's final offer did not contain a proposal identified as 3.c.

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4. The Employer and the Union will jointly work to disseminate information to the Employees concerning personal finances and other issues that can affect "good standing", and will hold forums and encourage employees to attend.

5. The Employer agrees to keep the Union apprised any issues with the State of Missouri's Displaced Worker Program in a timely manner.

6. The Employer and the Union will canvass for the availability of outplacement resources (including but not limited to resume writing, interviewing, career management, job fairs, etc.) beyond the Displaced Worker Program, and make arrangements for the provision of this information to Employees not less than 150 days prior to the effective date of closure.

7. Employees may request training and tuition assistance in accordance with applicable policies and procedures.

8. Employees may request Administrative Excusal to attend outplacement programs, which may be granted in accordance with mission requirements.

9. The Employer and the Union will jointly provide counseling and assistance concerning retirement (including discontinued service retirement), separation, insurance options and other issues pertinent to employees who have declined their Transfer of Function offer.

The adoption of its proposals would ensure that employees who have elected not to transfer to Fort Knox are provided with all the rights and benefits they are entitled to. The Union understands that the Employer cannot be bound to specific dates because of circumstances related to the TOF, however, keeping the Union apprised of any changes related to the TOF would give it the ability to engage in open dialogue with the Employer and make joint decisions consistent with the Army's slogan, "People First-Mission Always."

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2. The Employer's Position

The Employer's proposed MOA is as follows:

MEMORANDUM OF AGREEMENT
BETWEEN
HUMAN RESOURCES COMMAND-ST. LOUIS
AND
AFGE LOCAL 900

SUBJECT: Base Realignment and Closure (BRAC)

The Human Resources Command (HRC) - St. Louis, hereinafter referred to as the Employer, and the American Federation of Government Employees (AFGE) Local 900, hereinafter referred to as the Union, do hereby agree, on behalf of HRC-St. Louis bargaining-unit employees, hereinafter referred to as the Employees, to the following provisions related to the Employer's implementation of the Base Realignment and Closure (BRAC) legislation, November, 2005.

The parties acknowledge and agree that the decision to geographically move the Employer's operations from Overland, Missouri to Fort Knox, Kentucky, no later than September, 2011, is beyond the scope of bargaining. However, the Parties agree to the following in accordance with 5 USC 7106 (b) (3):

a. The Employer agrees to offer each full-time Employee, otherwise in good standing, continued employment at HRC-Fort Knox, Kentucky, at the General Schedule (GS) grade of the position to which the Employee is assigned at the time of the offer. Employees who accept the Employer's offer of continued employment at HRC-Fort Knox, Kentucky, and who are subsequently promoted to a higher GS graded position, will transfer to Fort Knox, Kentucky, at the GS grade of the position to which they were subsequently promoted.

b. The Employer agrees to afford all Employees who receive an offer of continued employment at HRC-Fort Knox, Kentucky, a maximum of thirty (30) calendar days to accept/decline said offer. The Employer will interpret the failure of an Employee to respond to the

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offer within the thirty (30) calendar days afforded, as a declination.

c. The Employer agrees to provide individual counseling, during the above-referenced thirty (30) calendar day period, to Employees who request assistance in making their decision to accept/decline the Employer's offer of continued employment at HRC-Fort Knox, Kentucky.

d. The Employer agrees to consider selecting Employees, who initially declined the Employer's offer of continued employment at HRC-Fort Knox, Kentucky, for vacant positions at HRC-Fort Knox, Kentucky; however, the Employer is in no way obligated to select such Employees.

e. The Parties recognize the statutory requirement to afford Employees who declined the Employer's offer of continued employment at HRC-Fort Knox, Kentucky, with thirty (30) calendar days of advanced notice of the Employer's intent to separate them from the Federal service. The Employer agrees, to the extent that such does not impair its ability to continue to successfully execute its mission, to afford such employees up to an additional forty-five (45) calendar days of advanced notice.

f. The Employer agrees that Employees who decline the Employer's offer of continued employment at Fort Knox, Kentucky, and are otherwise eligible, will receive Severance Pay in accordance with applicable regulations.

g. The Employer agrees to initiate an Outplacement Program designed to address the needs of Employees who have declined the Employer's offer of continued employment at HRC-Fort Knox, Kentucky. The Outplacement Program may include, but is not limited to: enrollment of eligible Employees in the DoD Priority Placement Program (PPP); retirement counseling; an on-site Job Fair; a "Job Swap" initiative with other Federal agencies in the commuting area; and utilization of the State of Missouri, Dislocated Workers Program. Subject to mission requirements, official duty time may be authorized for the attendance of Employees who have

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declined to transfer. Employees may be eligible through the State of Missouri, Dislocated Workers Program, for funded training to assist Employees in obtaining subsequent employment. The Employer further agrees to notify the Union in advance of the implementation dates of the various initiatives which comprise the above-referenced Outplacement Program.

h. The Employer agrees to continue to comply with the Parties' Labor-Management Agreement and applicable regulations regarding the detailing of Employees throughout the balance of its implementation of the 2005 BRAC legislation.

The above provisions constitute a full and final agreement with regard to the Employer's implementing actions to geographically relocate its operations to Fort Knox, Kentucky, pursuant to the 2005 BRAC legislation.

Its proposals provide the flexibility needed to deal with the impact of the closure of the St. Louis HRC on employees who decide not to transfer to Fort Knox. Since the announcement of the 2005 BRAC legislation, the Employer has experienced an increase in the number of employees who have left the Agency on their own initiative in order to secure alternative employment. While the Employer was able to mitigate those losses in previous years, with the transfer of function imminent within a matter of months, it is no longer a viable option to hire and train new employees willing to be relocated to Fort Knox. In this regard, its proposal to provide employees who decide not to transfer to Fort Knox a minimum separation notice period of 30 calendar days, with the potential of an additional 45 calendar days, would avoid the possibility of an exodus of a large number of civilian employees that could severely impair its ability to accomplish the mission.

CONCLUSION

Having carefully considered the arguments and evidence presented in this case, I conclude that the impasse should be resolved on the basis of a compromise between the Employer and Union final offers. In my view, this compromise addresses the Union's concerns by requiring that the parties work collaboratively to provide information to employees who have elected not to transfer to Fort Knox regarding their rights, benefits, and options related to the TOF. It does so while

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enabling the Employer to maintain the flexibility it needs to deal with issues related to the TOF and ensuring its ability to carry out its mission during the transfer.

DECISION

The parties shall adopt the following MOA:

MEMORANDUM OF AGREEMENT
BETWEEN
HUMAN RESOURCES COMMAND-ST. LOUIS
AND
AFGE LOCAL 900

The Human Resources Command (HRC) - St. Louis, hereinafter referred to as the Employer, and the American Federation of Government Employees (AFGE) Local 900, hereinafter referred to as the Union, do hereby agree, on behalf of HRC-St. Louis bargaining-unit employees, hereinafter referred to as the Employees, to the following provisions related to the Employer's implementation of the Base Realignment and Closure (BRAC) legislation, November, 2005.

The parties acknowledge and agree that the decision to geographically move the Employer's operations from Overland, Missouri to Fort Knox, Kentucky, no later than September, 2011, is beyond the scope of bargaining. However, the parties agree to the following in accordance with applicable laws and regulations:

1. The Employer agrees to offer each full-time Employee, otherwise in good standing, continued employment at HRC-Fort Knox, Kentucky, at the General Schedule (GS) grade of the position to which the Employee is assigned at the time of the offer. Employees who accept the Employer's offer of continued employment at HRC-Fort Knox, Kentucky, and who are subsequently promoted to a higher GS graded position, will transfer to Fort Knox, Kentucky, at the GS grade of the position to which they were subsequently promoted. The Employer and the Union will jointly work to disseminate information to the Employees concerning personal finances and other issues that can affect "good standing", and will hold forums and encourage employees to attend.

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2. The Employer agrees to afford all Employees who receive an offer of continued employment at HRC-Fort Knox, Kentucky, a maximum of thirty (30) calendar days to accept/decline said offer. The Employer will interpret the failure of an Employee to respond to the offer within the thirty (30) calendar days afforded, as a declination.

3. The Parties recognize the statutory requirement to afford Employees who declined the Employer's offer of continued employment at HRC-Fort Knox, Kentucky, with thirty (30) calendar days of advanced notice of the Employer's intent to separate them from the Federal service. The Employer agrees to afford such employees an additional sixty (60) calendar days advance notice unless such notice would substantially impair its ability to successfully execute the mission.

4. The Employer agrees that Employees who decline the Employer's offer of continued employment at Fort Knox, Kentucky, and are otherwise eligible, will receive Severance Pay in accordance with applicable regulations.

5. The Employer and the Union will jointly educate Employees who declined the offer of transfer that they may notify the Employer of their desire to move to the Fort Knox facility. The Employer agrees to give consideration to each request; however, the Employer is not obligated to select these employees.

6. The Employer agrees to initiate an Outplacement Program designed to address the needs of Employees who have declined the Employer's offer of continued employment at HRC-Fort Knox, Kentucky. The Outplacement Program may include, but is not limited to: enrollment of eligible Employees in the DoD Priority Placement Program (PPP); retirement counseling; an on-site Job Fair; a "Job Swap" initiative with other Federal agencies in the commuting area; and utilization of the State of Missouri, Dislocated Workers Program. Subject to mission requirements, official duty time may be authorized for the attendance of Employees who have declined to transfer. Employees may be eligible through the State of Missouri, Dislocated Workers

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Program, for funded training to assist Employees in obtaining subsequent employment. The Employer further agrees to notify the Union in advance of the implementation dates of the various initiatives which comprise the above-referenced Outplacement Program. The Employer agrees to keep the Union apprised of any issues with the State of Missouri's Displaced Worker Program in a timely manner.

7. The Employer agrees to continue to comply with the Parties' Labor-Management Agreement and applicable regulations regarding the detailing of Employees throughout the balance of its implementation of the 2005 BRAC legislation.

8. The Employer will provide those employees who declined their TOF offer with a statement of their rights and benefits.

9. The Employer and the Union will canvass for the availability of outplacement resources (including but not limited to resume writing, interviewing, career management, job fairs, etc.) beyond the Displaced Worker Program, and make arrangements for the provision of this information.

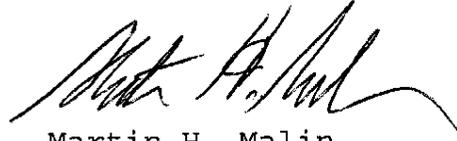
10. Employees may request training and tuition assistance in accordance with applicable policies and procedures.

11. Employees may request Administrative Excusal to attend outplacement programs, which may be granted in accordance with mission requirements.

12. The Employer and the Union will jointly provide counseling and assistance concerning retirement (including discontinued service retirement), separation, insurance options and other issues pertinent to employees who have declined their Transfer of Function offer.

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13. The above provisions constitute a full and final agreement with regard to the Employer's implementing actions to geographically relocate its operations to Fort Knox, Kentucky, pursuant to the 2005 BRAC legislation.



Martin H. Malin
Arbitrator

December 18, 2009
Chicago, Illinois