

66 FLRA No. 110

NATIONAL TREASURY
EMPLOYEES UNION
(Union)

and

NATIONAL CREDIT
UNION ADMINISTRATION
(Agency)

0-NG-3108

DECISION AND ORDER
ON A NEGOTIABILITY ISSUE

April 20, 2012

Before the Authority: Carol Waller Pope, Chairman, and
Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This case is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute) and concerns the negotiability of one proposal.¹ The Agency filed a statement of position (SOP), to which the Union filed a response (response). The Agency filed a reply (reply) to the Union's response.

For the reasons that follow, we dismiss the petition for review (petition). We find that the proposal is outside the duty to bargain.

II. Background

This dispute concerns field employees who spend most of their time traveling between credit unions conducting financial examinations, but who also perform work at their residences. Response at 2. Because the Agency does not maintain a central location to which the employees "commute," a controversy arose concerning whether employee travel time is compensable. SOP at 3. The parties began bargaining pursuant to a reopener clause in the parties' agreement, but the Agency declared

the Union's proposals nonnegotiable as contrary to law and management's rights. Response at 3-4.

III. Proposal 2.E**A. Wording**

As relevant here, section 3 of the proposal is set forth in the Union's petition as follows:²

3. If a field employee's [permanent work site (PWS)] is within the [official duty station (ODS)], any time spent traveling to or from an alternative worksite (AWS) inside or outside the ODS will be compensated. However, if the examiner does not perform at least 15 minutes of work at the permanent work site before or after visiting an alternative work site, he/she will not be compensated for travel time until he/she has traveled more than 30 minutes from the PWS at the beginning of the day or for the last 30 minutes of any travel to the PWS at the end of the work day. Whether the field employee performs work at the permanent work site, before or after visiting an alternative work site, shall be at the discretion of the field employee based upon legitimate work needs/demands.

Petition at 2.

B. Meaning

The parties agree that, as relevant here, the proposal would address travel compensation rules for travel between the employees' PWS and other work sites. Record of Post-Petition Conference at 2. The Agency argues that the last sentence of section 3 means that employees have "unfettered discretion to determine which assignments to complete prior to traveling to an

¹ The Union's petition for review included two proposals, but, at the post-petition conference, the Agency withdrew its allegation of nonnegotiability as to Proposal 2.V. Record of Post-Petition Conference at 2.

² The Union has not requested severance of the proposal. Because, as discussed below, section 3 of the proposal is outside the duty to bargain, the entire proposal is outside the duty to bargain. The entire text of Proposal 2.E is set forth in the appendix to this decision.

‘alternate worksite.’” SOP at 6. The Union agrees that the last sentence “sets forth that a field employee may at his/her discretion perform work at home before or after visiting another worksite if a legitimate work need presents itself.” Response at 24.

C. Positions of the Parties

1. Agency

The Agency argues that section 3 of the Union’s proposal gives employees the discretion over whether to perform work at the PWS, “completely depriving management of the right to assign work and to direct the Agency’s employees.” SOP at 5-6. According to the Agency, the proposal gives the employee, rather than the Agency, the right to “decide[] the appropriate work assignment, when that work will be completed[,] and when the employee will report to an ‘alternate worksite.’” *Id.* at 6. The Agency claims that the Union has not argued that the proposal constitutes a procedure or appropriate arrangement. *Id.* at 5 n.1.

2. Union

The Union contends that section 3 of the proposal “does not interfere with the Agency’s right to assign work.” Response at 22. According to the Union, a proposal interferes with the right to assign work when it “specifies which employees will (or will not) perform a particular task or when employees may perform the particular task.” *Id.* at 24. The Union claims that, because the parties’ agreement already provides that employees may perform work at home, the proposal only “sets forth what is already permitted” under the parties’ agreement. *Id.* at 26. The Union further asserts that, because employees already retain discretion as to whether to perform work at home, the proposal is negotiable because it “does not contravene the Agency’s right to assign work.” *Id.* at 27.

D. Analysis and Conclusion: The proposal is contrary to management’s right to assign work.

The Agency argues that the last sentence of section 3 of the proposal, which gives employees discretion to perform work before or after traveling to an alternate work site, “completely depriv[es]” management of its right to assign work. SOP at 5-6. The right of an agency to assign work under § 7106(a)(2)(B) of the Statute includes the authority to determine the particular duties to be assigned, when work assignments will occur, and to whom or what positions the duties will be assigned. *AFGE, Local 3392*, 52 FLRA 141, 143 (1996) (*Local 3392*). On the other hand, proposals that concern where work will be performed have been found not to

affect management’s right to assign work. *AFGE, AFL-CIO*, 5 FLRA 83, 86-87 (1981) (*AFGE*).

We find that section 3 of the proposal affects management’s right to assign work because it affects the Agency’s right to determine when work assignments will occur. *See AFGE, AFL-CIO, Local 2263*, 15 FLRA 580, 583 (1984) (the right to assign work includes the right “to determine when the work which has been assigned will be performed”). In particular, as the Union concedes, section 3 permits employees unilaterally to decide whether to “perform work at home before or after visiting another worksite.” Response at 24. The proposal here is distinguishable from that in *AFGE*. In that case, the Authority found that the proposal did not affect the right to assign work because “[t]he *only* change which would result [from the proposal] would be a difference in where the employee would perform [the assigned] duties.” *AFGE*, 5 FLRA at 87 (emphasis added). Further, the Authority specifically noted that the proposal “would in no way limit the [a]gency’s decision as to when the duties involved” would be performed. *Id.* at 86. Here, on the other hand, the proposal limits the Agency’s ability to determine when work will be performed because it permits employees to exercise discretion as to whether to perform “work at the permanent work site, *before or after* visiting an alternative work site.” Petition at 2 (emphasis added).

The Union argues that section 3 of the proposal does not affect the right to assign work because it “only explicitly sets forth what is already permitted under the [parties’] agreement.” Response at 26. The Union’s claim is without merit, however, because the Authority has consistently held that proposals “that are nonnegotiable because of interference with a management right do not become negotiable because they simply restate an existing agency policy or practice.” *AFGE, Local 1164*, 54 FLRA 1327, 1339 (1998) (*Local 1164*) (quoting *AFGE, Local 900*, 46 FLRA 1494, 1503 (1993) (internal quotation marks omitted)).

Accordingly, we find that section 3 of the proposal affects management’s right to assign work. *See Int’l Ass’n of Fire Fighters*, 59 FLRA 832, 833-34 (2004) (finding that the determination of “when during the day assigned work will be performed” constitutes an exercise of management’s right to assign work); *Local 1164*, 54 FLRA at 1343 (finding that a proposal that required the agency to wait thirty minutes before assigning interviews affected management’s right to assign work).

Because section 3 of the proposal affects management’s right to assign work, it is outside the duty to bargain unless the Union can establish that the proposal is a procedure under § 7106(b)(2) or an

appropriate arrangement for adversely affected employees under § 7106(b)(3). *See NAGE, Local R14-87*, 21 FLRA 24, 31-33 (1986). However, the Union fails to assert that the proposal is either a procedure or an appropriate arrangement and, as a result, we find no basis to consider whether the proposal is within the duty to bargain under § 7106(b)(2) or (3). *See Local 3392*, 52 FLRA at 143. As stated above, the Union has not made any request to sever the proposal and, thus, we do not consider the remainder of the proposal. *See AFGE, Local 221*, 64 FLRA 1153, 1161 (2010). Accordingly, because section 3 of the proposal is outside the duty to bargain, we find that the entire proposal is outside the duty to bargain.³ *See Nat'l Weather Serv. Emps. Org., Branch 9-10*, 61 FLRA 779, 782 (2006) (finding that, where a union does not request severance, if any part of the proposal is outside the duty to bargain, the entire proposal is outside the duty to bargain).

IV. Order

The Union's petition is dismissed.

APPENDIX

Article 11

Proposal 2.E.

1. Non-Field Employees – Normal daily travel by a non-field employee to and from the official work site within his/her official duty station before and after the regular workday is commuting time and is non-compensable and not hours of work.
2. Field Employees – Because field employees work from their homes, a field employee's home shall be designated as his/her permanent work site (PWS). The official duty station (ODS) shall be the city limits of the official duty station designated on the SF-50. (The parties have attached a document listing the name and ODS of each field employee employed by [the Agency]. This constitutes specific notice of each determination set forth therein and agreement by the parties thereto.)
3. If a field employee's PWS is within the ODS, any time spent traveling to or from an alternative worksite (AWS) inside or outside the ODS will be compensated. However, if the examiner does not perform at least 15 minutes of work at the permanent work site before or after visiting an alternative work site, he/she will not be compensated for travel time until he/she has traveled more than 30 minutes from the PWS at the beginning of the day or for the last 30 minutes of any travel to the PWS at the end of the work day. Whether the field employee performs work at the permanent work site, before or after visiting an alternative work site, shall be at the discretion of the field employee based upon legitimate work needs/demands.
4. If a field employee's PWS is outside the ODS but within 40 miles of the outside boundary of

³ The Agency also argues that section 2 of the proposal is contrary to management's right to determine its organization, SOP at 5, and that the proposal would compensate employees for time spent commuting in violation of 5 C.F.R. § 550.112(j)(2) and 5 C.F.R. § 551.422(b), *id.* at 7. Based on our decision, it is unnecessary to address these arguments. *See NAGE, Local R-109*, 66 FLRA 278, 281 n.2 (2011).

the city limits of the ODS as designated on the SF-50, any time spent traveling to or from an AWS in the ODS, will be compensated – less the time spent traveling to and from the nearest boundary point of the ODS. Time traveling to or from an AWS outside the ODS that reasonably involves going through the ODS will be compensated, less the time it takes to first enter the ODS boundary. (Similarly, when returning to the PWS, the time from when one exits the ODS boundary to the PWS is not compensable.) However, if the field employee does not perform at least 15 minutes of work at the permanent work site before or after visiting an alternative work site, he/she will not be compensated for travel time until he/she has traveled more than 30 minutes from the PWS at the beginning of the day or for the last 30 minutes of any travel to the PWS at the end of the work day. Whether the field employee performs work at the permanent work site, before or after visiting an alternative work site, shall be at the discretion of the field employee based upon legitimate work needs/demands.

5. If a field employee's PWS is outside the ODS but within 40 miles of the outside boundary of the city limits of the ODS as designated on the SF-50, any time spent traveling to or from an AWS outside the ODS without going through the ODS will be compensated. However, if the field employee does not perform at least 15 minutes of work at the permanent work site before or after visiting an alternative work site, he/she will not be compensated for travel time until he/she has traveled more than 30 minutes from the PWS at the beginning of the day or for the last 30 minutes of any travel to the PWS at the end of the work day. Whether the field employee performs work at the permanent work site, before or after visiting an alternative work

site, shall be at the discretion of the field employee based upon legitimate work needs/demands.

6. If a field employee's PWS is outside the ODS and not within 40 miles of the outside boundary of the city limits of the ODS as designated on the SF-50, any time spent traveling to or from an AWS outside the ODS that reasonably involves going through the ODS will be compensated, less the time it takes to first enter the ODS boundary. (Similarly, when returning to the PWS, the time from when one exits the ODS boundary to the PWS is not compensable.) However, if the field employee does not perform at least 15 minutes of work at the permanent work site before or after visiting alternative work sites, he/she will not be compensated for travel time until he/she has traveled more than 30 minutes from the PWS at the beginning of the day or for the last 30 minutes of any travel to the PWS at the end of the work day. Whether the field employee performs work at the permanent work site, before or after visiting an alternative work site, shall be at the discretion of the field employee based upon legitimate work needs/demands.
7. If a field employee's PWS is outside the ODS, and not within 40 miles of the outside boundary of the city limits of the ODS as designated on the SF-50, any time spent traveling to or from an AWS – that does not involve going through the ODS as set forth in paragraph 6, above, – will be compensated as though the field employee's PWS was located at the closest 40-mile boundary of the ODS to their actual residence. Thereafter the provisions of paragraph 4 and 5, above, shall apply.

8. The provisions set forth in paragraphs E.3 through E.7, above, shall also apply to the travel to or from a field employee's PWS to or from a transportation terminal.

Petition at 2-3.