

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

United States Department of
Agriculture,
Customer Service Center

and

American Federation of Government
Employees, Local 3354

Case No. 18 FSIP 032

DECISION AND ORDER

The United States Department of Agriculture, Customer Service Center (Agency or Management) filed a request for assistance with the Federal Services Impasses Panel (Panel) to consider a negotiation impasse over the remaining articles in a successor collective bargaining agreement (CBA) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §7119, between it and the American Federation of Government Employees, Local 3354 (Union).

Following an investigation of the Agency's request for assistance, the Panel determined that it would assert jurisdiction over the three articles identified in the Agency's request for assistance: official time, tours of duty, and telework. It further concluded that the parties' dispute over these issues would be resolved through an Informal Conference. The Informal Conference was held on June 21, 2018 in Washington, D.C. and was conducted by Member Karen Czarnecki. The parties were informed that if settlement was not reached during the Informal Conference, Member Czarnecki would notify the Panel of the status of the dispute. The Panel would then take whatever action it deemed appropriate to resolve the impasse, which may include the issuance of a *Decision and Order*. The parties fully resolved their disputes over official time and tours of duty and reached agreement on all but three proposals within their telework article. Accordingly, Member Czarnecki ordered the parties to submit written submissions by June 25, 2018. Both parties submitted timely submissions.

BACKGROUND

The Agency is a component of Rural Development branch of the USDA. It is charged with servicing mortgage loans and grants extended to individuals in rural areas throughout the United States, Puerto Rico, American Samoa, the U.S. Virgin Islands, and the Pacific Trust Territories. There are five different branches within this Agency, and the Agency accomplishes its mission primarily by having its employees answer telephone inquiries from the public between the hours of 6:45 a.m. and 6 p.m. USDA has already announced plans to combine the Agency with the USDA's National Finance Center. The American Federation of Government Employees, Local 3354 (Union) represents around 300 employees in all five existing branches. Positions in this unit include mostly loan processing positions that collect payments and provide customer service to individuals on the telephone. The parties are governed by a collective bargaining agreement (CBA) that was enacted in 1999 and has been occasionally updated. In 2013, Management gave notice that it intended to reopen the CBA.

The parties have had "on and off" negotiations starting in 2015 and resolved numerous articles on their own. The parties sought mediation assistance from FMCS in 2017 in Case No. 20171180003 to address several disputed articles. At mediation, the parties reached further agreement but could not fully resolve their dispute. Accordingly, the Agency filed a Request for Assistance with the Panel on February 22, 2018. As a result of the Informal Conference process discussed above, there are now only three issues before the Panel for resolution.

ISSUES

1. Section A(5) – The number of days employees may telework per pay period.
2. Section A(6) – Whether an employee may telework during a week if they are absent from the office during that week due to other reasons.
3. Section A(7) – Whether Management must provide prior notice to the Union before it alters an employee's participation in telework.

PROPOSALS AND POSITION OF THE PARTIES (Bold language indicates areas of disagreement)

1. Union Proposal Section A(5)

Employees may request no **less than four (4) Telework Days and no more than six (6) Telework Days** per Pay Period. Management shall Approve/Disapprove Telework Requests.

Management Proposal Section A(5)

Employees may request no **more than two (2)** Telework Days per Pay Period. Management shall Approve/Disapprove Telework Requests.

The dispute centers on whether bargaining-unit employees may telework more than twice per pay period, *i.e.*, twice in a 2-week period. Per a Telework Memorandum of Agreement (MOA), the *status quo* at the Agency until March 2018 was that employees could telework “up to” 6 days per pay period. In January 2018, USDA announced a new initiative entitled “OneUSDA” to be implemented throughout the entirety of USDA. The goal of this initiative is to demonstrate “one face” to the public and increase public accessibility. To facilitate this goal, USDA drafted a new telework policy meant to apply throughout USDA without exception. The policy recognizes that telework produces “tangible savings and other benefits.” However, it also states that telework “must be balanced to ensure there are no negative impacts on the ability of the [USDA] to achieve its mission and provide high quality customer service.” Consistent with the foregoing, the policy limits telework to “no more than 2 days a pay period.” The Agency introduced the entire USDA policy during FMCS mediation as its proposal in January 2018, and the Union refused to accept the proposal. In March 2018, the Agency implemented the aforementioned telework limitation (which prompted a still pending grievance).

During the June 21, Informal Conference, the Agency offered a new proposal that blended key portions of the USDA policy with the Union’s last best offer that it had submitted to the Panel and the Agency. Because of this change, the parties resolved much of their dispute over the general topic of telework during the Informal Conference. They continue to disagree over the number-of-days issue.

Union's position -

The Union maintains that, since 2015, bargaining-unit employees have been “successfully” teleworking up to 6 days per pay period. This arrangement has made employees “more resilient in severe weather and other emergencies; [] has improved the quality of employee work-life; and has increased employment opportunities for persons with disabilities.” The Union concedes that the Agency has closed due to weather situations only 3-4 times in the past 5 years, but also maintains that between 15-20 disabled or temporarily disabled employees have taken advantage of telework arrangements. In any event, teleworking employees largely continue to meet their performance standards, and Management has not complained about telework problems previously.

Agency's position –

Management acknowledges that telework is authorized by law but maintains that it is not a right. Accordingly, it seeks compliance with the USDA policy. Compliance will

“provide a better working environment” when employees are present in the workplace. Management offers many work-site training and mentorship opportunities on a weekly basis; being at the work place will allow employees to embrace those opportunities and foster more fulsome working relationships with their co-workers. Additionally, a greater employee presence allows Management a better opportunity to address any sudden work-place deficiencies, *e.g.*, coverage issues. Moreover, although the Agency’s primary function is that of a call center, it has a loan-servicing department that takes calls from every part of the United States. When there are not sufficient on-site resources, customers in the West must wait longer to speak to a representative or not speak to a representative at all. The Agency is aware of only 9 disabled employees who have some sort of telework arrangement due to reasonable accommodations under law. In other words, telework for this group of employees is already handled consistent with an established legal framework. All of the foregoing is aligned with the USDA policy. As such, the Agency’s proposal should be adopted.

Conclusion-

The Panel adopts the Agency’s proposal. Management’s position is motivated, in large part, by its desire to ensure that its work-site has proper coverage for customers throughout the United States. Six days of telework per pay period has deprived Management of the ability to provide this coverage because teleworking employees are not present throughout the day. Management’s proposal will help alleviate this burden. While not raised in its submission to the Panel, at the Informal Conference, Management also raised concerns that customers complained about background noises during telephone calls, *e.g.*, crying children, animals, televisions, etc. A more frequent presence within the work place will also alleviate those concerns. Relatedly, at the hearing, Management asserted that productivity had decreased because employees were unavailable to take calls. Adoption of the Agency’s proposal will assist in increasing productivity. Although we do not take a position on compliance with the USDA policy, we note that Section 4.e of the policy grants discretion to authorize **more than 2 days** of telework in certain situations, *e.g.*, emergencies, space-shortage. Additionally, the policy notes that appropriate laws and regulations should be followed when it comes to seeking reasonable accommodation telework requests. Nothing in the Agency’s proposal changes this applicable legal framework or an employee’s rights under that framework. Finally, with respect to the Union’s contention about teleworking during weather-related situations, the Panel notes that Section H of the parties’ agreed-to-telework language addresses weather-related telework.

2. Agency Proposal Section A(6)

If an employee has any type of Absence during the week, the employee cannot Telework that week. Absences include, but are not limited to, Holidays, Scheduled/Unscheduled Days Off, Leave, and Unauthorized Absences

Union Counter Proposal

The Union opposes the Agency's language in its entirety and offers no counter proposal.

The dispute centers on whether employees who miss at least one day during a work week for *any* reason are then prohibited from teleworking that week.

Union position -

Employees must meet the same set of performance standards whether they telework or are on site for work. Being on leave does not change an employee's work requirements. As such, Management should not be able to revoke an employee's telework day simply because he or she is out of the office during the week.

Agency position -

The Agency relies upon the same arguments discussed for its position on Proposal Section A(5). Accordingly, Management requests full adoption of its proposal for Section A(6).

Conclusion-

The Panel will order the adoption of Management's proposal. This proposal is linked to Management's proposal for Section A(5). In other words, it is meant to ensure maximum work place coverage. Because we have adopted the previous proposal, it is appropriate to adopt this proposal as well.

3. Agency Proposal Section A(7)

Management may Amend, Alter, Adjust, Change, Remove, Suspend, or Terminate any individual employee's or all employees' participation in the Telework Program at any time.

Union Proposal Section A(7)

Management may Amend, Alter, Adjust, Change, Remove, Suspend, or Terminate any individual employee's or all employees' participation in the Telework Program at any time **with prior notice to the Union. This**

notification should include the effective date and reasons for the change in telework. Supervisor and employee shall attempt to work out the specific problems before the Agency terminates the employee's participation in the Telework Program.

When the Agency decides to Remove, Suspend, or Terminate an employee from the Telework Program, the Agency shall advise the employee, in writing. Such notice shall indicate the reason(s) for the Removal, Suspension, or Termination. Unless otherwise indicated, the employee may re-apply for participation in the Telework Program after thirty (30) calendar days provided the employee has corrected the basis for the Removal, Suspension, or Termination. If the Agency stopped the employee's participation because of mission-related reasons, the employee may ask for reconsideration once the mission-related basis has changed or ended.

The parties agree that the Agency has wide latitude to make changes to an employee's telework schedule. The sole dispute in this proposal concerns whether Management must provide notice to the Union before it does so.

Union position –

The Union acknowledges that Management has the right to change an employee's telework schedule. Thus, it does not object to the Agency's language, but it wishes to formalize a requirement that the Union receive notice and also establish a process that would grant the employee the option of seeking a return to telework at a later date. At the Informal Conference, the Union indicated that employees and supervisors have worked out disagreements concerning telework in the past.

Agency position –

Management's language provides it "greate[r] flexibility" to deal with issues like coverage problems, performance issues, and violations of telework rules and polices. The Agency will be able to resolve these issues "swiftly," and the proposal will ensure maximum compliance with the USDA policy.

Conclusion-

We will order adoption of the Agency's proposal. During the Informal Conference, the parties agreed that supervisors largely provide the Union with courtesy notice when it alters an employee's telework schedule. The Union did not establish why this process must be formalized by contract. Moreover, in its last best offer it originally submitted to the Panel, the Union included language stating that supervisors could change schedules but did *not* include the notice language it now proposes. The Union did not explain the rationale for this change. Based on all the foregoing, then, the Agency's proposal is the more appropriate one.

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:

- Agency Proposal Section A(5) - The Panel orders the parties to adopt the Agency's proposal.
- Agency Proposal Section A(6) – The Panel orders the parties to adopt the Agency's proposal.
- Agency Proposal Section A(7) – The Panel orders the parties to adopt the Agency's proposal.

By direction of the Panel.



Mark Carter
Chairman

July 10, 2018
Washington, D.C.