United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of SMITHSONIAN INSTITUTION NATIONAL GALLERY OF ART WASHINGTON, D.C. and LOCAL 1831, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case No. 06 FSIP 130

DECISION AND ORDER

The Smithsonian Institution, National Gallery of Art, Washington, D.C. (Employer) 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 Local 1831, American Federation of Government Employees, AFL-CIO (Union).

After an investigation of the request, which concerns three remaining issues in negotiations over a successor collective bargaining agreement (CBA),[1/] the Panel determined that the dispute should be resolved through an informal conference with Panel Member Grace Flores-Hughes. The parties were advised that if no settlement were reached during the informal conference, Member Flores-Hughes would report to the Panel on the status of the dispute, including the parties' final offers and her recommendations for resolving the issues. After considering this information, the Panel would take whatever action it deems appropriate to resolve the impasse, which could include the issuance of a *Decision and Order*.

1/ The Panel declined to assert jurisdiction over two other issues involving procedures for the use of sick leave because the Employer provided evidence that the parties already had reached agreement over them.

Pursuant to the Panel's determination, Member Flores-Hughes held an informal conference with the parties on November 21, 2006, at the Panel's offices in Washington, D.C., but a voluntary settlement was not reached. The Panel has now considered the entire record, including the Employer's post-conference submission, and Member Flores-Hughes' recommendations for resolving the dispute.

BACKGROUND

The National Gallery of Art houses one of the finest collections of paintings, sculptures and graphic arts in the world. In addition to being open to the general public, it provides a variety of other programs and services through a partnership of Federal and private resources. The Union represents a bargaining unit consisting of approximately 400 non-professional employees; typical bargaining-unit positions include security guard, administrative assistant, laborer, housekeeper, mechanical engineer, and electrician. About one third of the unit consists of Wage Grade employees, WG-3 through -10; most of the General Schedule employees are security guards, GS-5 through -7. The parties' current CBA, which was implemented in 1978, will remain in effect until a successor CBA is effectuated.

ISSUES AT IMPASSE

The parties disagree over: (1) official time for Union representatives to receive Union-sponsored training (Article V, Section 3); (2) official time for representational purposes for Union officials other than the Union president (Article V, Section 3); and (3) the percentage of arbitration costs each side should pay in connection with Employer-initiated grievances (Article XXIII, Section 6).

1. Official Time for Union-Sponsored Training

a. The Union's Position

The Union proposes that the following wording be imposed by the Panel to resolve the dispute:

> Administrative leave ordinarily for short periods not to exceed 8 hours and not to exceed 4 days in one calendar year may be granted to the recognized Union officers and stewards on request and within the work requirements of the agency to attend training sessions

> sponsored by the Union where such training clearly benefits the Employer, such as providing information, briefing, or orientation including matters relating to personnel policies, working conditions, grievance procedures and the negotiated agreement. This leave will not be granted for training if the primary purpose of it is to train and inform employees as to solicitation of membership and dues, other internal Union business, or representing the Union in collective bargaining. In making request for such leave, the Union will inform the agency in writing, at least 5 work days in advance, of the time and the purpose of the training.

Its proposal essentially would retain the provision in the current CBA, and the Employer has not demonstrated the need to change the *status quo*. In the Union's view, the parties have operated successfully under the provision since 1978. While the Employer claims the wording is ambiguous, other than during the negotiations that led to this impasse, there have been no instances where there was a disagreement over its application in a specific circumstance.

b. The Employer's Position

The Employer's counter-offer is as follows:

> The parties agree to establish a bank of 150 hours of official time each calendar year to allow Union representatives to attend training. Requests for training may be granted to the recognized Union representatives on request and within the work requirements of the Employer to attend training sessions sponsored by the Union where such training clearly benefits the Employer, such as providing information, briefing, or orientation including matters relating to personnel policies, working conditions, grievance procedures and the negotiated agreement. This official time will not be granted for training if the primary purpose of it is to train and inform employees as to solicitation of memberships and dues, other internal Union business, or representing the Union in collective bargaining. In making requests for such official time, the Union will make its best effort to inform the Employer in writing, at least 10 calendar days in advance, of the time and purpose of the training. If the Union exhausts this

> 150 hours of official time before the end of the calendar year, the Union must submit written justification to the Employer establishing the exceptional circumstances to support additional official time for training.

From 1997 through 2006, the amount of official time the Employer has authorized for Union-sponsored training has ranged from 0 to 80 hours per year. Thus, its proposal to provide 150 hours per year is more than fair, given what the Union has actually been using. It also would permit the Union to train more stewards than it currently has, and allows it to request additional hours if the bank is exhausted prior to the end of a year and the Union can establish exceptional circumstances. Finally, its adoption would eliminate the parties' disagreement over the meaning of the current provision, which the Union erroneously interprets to require management to grant its officials up to a total of 384 hours per year for Union-sponsored training.

CONCLUSION

Having carefully considered the parties' positions on this issue, including their past practice, we shall order the adoption of the Employer's proposal to resolve the dispute. In our view, 150 hours of official time per year for Union-sponsored training is generous given the parties' present circumstances. Moreover, eliminating the ambiguity inherent in the Union's proposal (and the current CBA provision) would remove a source of potential conflict in future years.

2. Official Time for Representational Purposes for Union Officials other than the Union President

a. The Union's Position

The Union proposes that "reasonable time during working hours [] be given to Union representatives to discuss, investigate, and present grievances or other matters for which representation is authorized." Its proposal is identical to the wording in the parties' current CBA. In this regard, the "reasonable time" standard is common in the Federal sector, and permits Union representatives and supervisors to work out the use of official time on a case-by-case basis without pre-established limitations. It also would permit the Union to provide more effective representation than the Employer's proposal, particularly if the number of active Union officials increases in future years, as it anticipates.

b. The Employer's Position

The Employer's proposal is as follows:

> Reasonable official time during working hours will be given to Union representatives to discuss, investigate, and present grievances or other matters for which representation is authorized. With the exceptions set out under Article V, Sections 3 and 6, and Article IX, Section 2 of this Agreement, reasonable official time will be limited to no more than six (6) hours per week total, to be shared by all Union representatives, other than the Union President, unless circumstances warrant a waiver and specific prior approval is obtained from the Personnel Office. With prior approval, Union representatives who work in the Office of Protection Services may be released during roll call time as a last resort, when no other times are available to meet with an employee within or outside of AOP. Guidelines for the suggested amount of official time are found in Appendix B. Official time will not be granted for representational duties outside of the bargaining unit. Overtime, premium pay, travel expenses, and per diem will not be paid by the Employer for representational functions performed by Union representatives.

Its proposal more accurately represents the *status quo* than the Union's, reflecting side-bar agreements the parties have reached in previous years to limit the amount of official time that would be granted to all other Union representatives in exchange for increasing the Union President's official time to 100 percent. According to the Employer's records, all of the Union's other representatives combined used a total of 3, 16.5, and 0 hours of official time annually in 2004, 2005, and 2006, respectively, significantly below the 6 hours per week that has been in effect for many years that would be retained under the Employer's proposal.

CONCLUSION

After thoroughly reviewing the record created by the parties on this matter, we are persuaded that the Employer's proposal provides the more reasonable basis for resolving their impasse. Among other things, it maintains the deal the parties struck after the same reasonable time standard led to numerous grievances concerning official time for the Union President. In

addition, given the parties' history on this issue, returning to a reasonable time standard for other Union officials could result in the very same sorts of disputes their previous deal has succeeded in avoiding. The Employer's proposal also appears fair because it does not include time spent by Union representatives in Labor-Management Committee meetings or additional activities, such as arbitration hearings. Accordingly, we shall order its adoption.

3. Percentage of Arbitration Costs Paid for Employer-Initiated Grievances

a. The Union's Position

In cases where arbitration is invoked in connection with Employer-initiated grievances, the Union proposes that "the Employer and Union agree to share the cost of arbitration including all fees and expenses on a basis of 25 percent paid by the Union and 75 percent paid by the Employer." The parties' agreed in 1996 that, in cases of Union or employee-initiated grievances, the Employer would pay 65 percent of the expenses if arbitration is invoked. The Union believes that the Employer should pay a higher percentage of arbitration costs when it initiates a grievance. In this regard, its proposed 75/25 percent split in such circumstances is consistent with the wording in the current CBA that applies only to Union and employee-filed grievances.

b. The Employer's Position

The Employer proposes the following wording:

> The Employer and the Union will share the cost of arbitration, including fees and expenses (with the exception of the FMCS processing fee which is addressed separately under Section 7, below), on the basis of 65 percent paid by the Employer and 35 percent paid by the Union.

Its proposal reflects the parties' practice since 1996, and management sees no need for a change in the current terms between the parties. Neither side has invoked arbitration in the past 10 years, nor is the current level of activity likely to increase during the term of the new CBA. Additionally, there is no reason for management to retreat from the 65/35 percent split since most CBAs in the Federal sector call for arbitration costs to be shared equally between parties.

CONCLUSION

On this issue, we conclude that the Union has failed to demonstrate the need to change the *status quo*. Therefore, we shall order the adoption of the Employer's proposal to resolve the parties' dispute.

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 pursuant to 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 following:

1. **Official Time for Union-Sponsored Training**

   The parties shall adopt the Employer's final offer.

2. **Official Time for Representational Purposes for Union Officials other than the Union President**

   The parties shall adopt the Employer's final offer.

3. **Percentage of Arbitration Costs Paid for Employer-Initiated Grievances**

   The parties shall adopt the Employer's final offer.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

December 22, 2006
Washington, D.C.