

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

GENERAL SERVICES ADMINISTRATION  
NORTHWEST/ARCTIC REGIONAL OFFICE  
(REGION 10)  
AUBURN, WASHINGTON

and

COUNCIL 236, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 07 FSIP 105

**DECISION AND ORDER**

The General Services Administration, Northwest/Arctic Region (Region 10), Auburn, Washington (Employer or GSA) 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 Council 236, American Federation of Government Employees, AFL-CIO (Union).

Following an investigation of the request for assistance, which concerns excused absence for participation in physical fitness activities, the Panel determined to resolve the parties' dispute through single written submissions. The parties were informed that after considering the entire record, the Panel would take whatever action it deems appropriate to settle the impasse, which may include the issuance of a *Decision and Order*. Written statements were made pursuant to this procedure and the Panel has now considered the entire record.

**BACKGROUND**

The Employer's mission is to establish policy for, and provide economical and efficient management of, Government property and records, including construction and operation of buildings, procurement and distribution of supplies, utilization and disposal of real and personal property, transportation, traffic and communications management, and management of the

government-wide automated data processing resource programs. GSA's organization consists of the Federal Acquisition Service (FAS), the Public Buildings Service (PBS), the Office of Government-wide Policy, and other Staff Offices. The Union represents 328 employees who typically work as contracting officers and realty specialists at grades GS-7 through GS-11. The parties are covered by a National Agreement that was to have expired in October 2007.

### ISSUE AT IMPASSE

Essentially, the parties disagree over whether certain bargaining-unit employees in Region 10 should continue to receive up to ½ hour of excused absence three times per week to participate in physical fitness activities.<sup>1/</sup>

### POSITIONS OF THE PARTIES

#### 1. The Employer's Position

The Employer proposes to discontinue the unwritten practice of granting certain bargaining-unit employees in Region 10 excused absence to participate in physical fitness activities.<sup>2/</sup> Its proposal is consistent with Chapter 8, paragraph 10d of GSA Directive OAD P 6010.4, *Time and Leave Administration*, which recognizes the contribution of physical fitness to overall health and supports physical fitness programs. Under the directive, however, supervisors cannot routinely grant excused absence to participate in physical fitness activities even when the facilities are on the Employer's premises and are sponsored by employee recreation associations or similar organizations. Under the directive, supervisors have the discretion to excuse less than 1 hour without charge to leave when such absences are unavoidable or necessary in situations that are non-routine, emergency, or when it is in the interests of GSA to excuse the employee. The Employer does not consider voluntary

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1/ FAS is one of GSA organizational components in Region 10; the other is the Public Building Service (PBS). While the Union alleges in its written submission that the practice also affects PBS, it is clear from the record that the parties' negotiations involved only bargaining-unit employees in FAS.

2/ According to the Employer, its proposal "would affect only those employees assigned to the FAS organization" because the practice does not exist in PBS.

participation in physical fitness activities as absences that are unavoidable, necessary, non-routine or emergency situations.

Discontinuation of the practice is also warranted because no bargaining-unit positions have physical fitness standards as part of their job descriptions or have duties that otherwise might justify excused absence to participate in physical fitness activities. In addition, the adoption of its proposal would bring FAS Region 10 employees into alignment with those in PBS, which has been in compliance with GSA Directive OAD P 6010.4 since at least 1995. Finally, the change management is proposing would not preclude employees from participating in physical activities during the workday. Existing flexible and compressed work schedule options would permit employees to engage in such activities provided they adjust their starting and ending times so that the number of hours worked is consistent with their tours of duty.

## 2. The Union's Position

The Union contends that the Employer has not demonstrated a "compelling need" to change "the long standing practice" of granting employees excused absence to participate in physical exercise activities. Nevertheless, the Union is sensitive to management's concern that "more employees may wish to utilize" excused absence "than are currently doing so," which could lead to lost productivity. To address this possibility, among other things, the Union proposes to cap the amount of excused absence granted per week at GSA's Auburn and Seattle, Washington, locations by applying a "formula" that would be implemented in January 2008.<sup>3/</sup>

The Union asserts its proposal is consistent with GSA Directive OAD P 6010.4. The directive gives supervisors the discretion to grant excused absences of up to 59 minutes for various reasons, including "when it is in the interest of GSA to excuse the employee." In this regard, the practice of granting 30 minutes at a time for physical fitness activities was authorized by a former Regional Administrator as being in the best interests of GSA, and "has been in place for more than 20 years." Since its inception, there have been no problems regarding employee abuse of the practice, nor any allegations that the number of employees who have utilized the time for physical fitness activities has been excessive. Despite this,

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<sup>3/</sup> See Attachment A for the complete text of the Union's proposal.

the Union's proposal to cap the amount of excused absence would meet the Employer's concern that more employees would begin to utilize the physical fitness centers for physical fitness activities. Finally, the Union contends that the Employer "is totally incorrect" when it states that the past practice "only affects the FAS organization." The 1995 PBS memo that management relies upon to support this claim was never issued to the Union nor implemented within the bargaining unit. For this reason, the Employer "has not followed the proper procedure" to end "an approved past practice," and "should not be allowed to run to the [] Panel over an issue when [it has] failed to fulfill [its] obligations to negotiate with the Union."

### CONCLUSION

Having carefully considered the evidence and arguments presented by the parties, we shall order the adoption of the Employer's proposal to resolve the dispute. Regardless of the circumstances under which the practice originated or whether it is inconsistent with GSA regulations, it is clear that management in Region 10 no longer believes that its continuation would be beneficial to the accomplishment of GSA's mission. In our view, there is insufficient evidence in the record concerning the benefits of the practice. The Union's proposed alternative is too administratively burdensome to resolve this dispute.<sup>4/</sup>

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<sup>4/</sup> As to the Union's contention that the Employer unlawfully terminated the practice in PBS, the claim appears to be tangential to the issue over which the Panel asserted jurisdiction. In any event, the Panel is not the appropriate forum for enforcing a party's statutory rights.

**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 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the following:

The parties shall adopt the Employer's proposal.

By direction of the Panel.

H. Joseph Schimansky  
Executive Director

November 19, 2007  
Washington, D.C.

## ATTACHMENT A

AFGE Council 236's final offer is as follows:

GSA's printout for unit employees (copy attached) reflects the following:

Auburn, WA: Total employees in Auburn are 244, with the maximum number of employees (at any period of time) utilizing the facility on duty time being 24 to 25. That is a maximum useage of up to 10% of the workforce at any given time.

Seattle, WA: Total employees in Seattle are 32 unit, with the maximum number of employees (at any period of time) utilizing the facility on duty time being 4. That is a maximum useage of 12.5% (13% rounding up) of the workforce at any given time.

Thus, if all the employees in each location use the maximum 90 minutes per week (which both Parties have stated has not yet happened), the number of hours per week currently that is allowed would be computed as follows:

Auburn: 25 employees X 90 minutes = 37.5 hours

Seattle: 4 employees X 90 minutes = 6 hours

We propose the following numbers be utilized in the event that the useage of the fitness facilities by maximum number of employees in each location changes, which controls the total number of duty hours utilized at no more than the current level:

- Up to 10% (or 25 employees for Auburn) and 12.5% (or 4 employees for Seattle) the total amount of time currently allowed will remain the same (up to 30 minutes of duty time at a time, up to 3 times a week). Maximum useage: 37.5 hours for Auburn, and 6 hours for Seattle.
- Up to 15% (or from 26 to 37 employees in Auburn) and up to 15.6% (or 5 employees for Seattle), the total amount of time allowed may be reduced to up to 30 minutes of duty time at a time, up to 2 times a week). Maximum useage: 37 hours for Auburn, and 5 hours for Seattle.
- Up to 20% (or from 38 to 49 employees in Auburn, or up to 6 employees in Seattle), the total amount of time allowed may be reduced to up to 30 minutes of duty time at a time, up to 1 time a week). Maximum useage: 24.5 hours for Auburn, and 3 hours for Seattle.
- More than 20% (or 50 or more employees in Auburn, more than 7 employees in Seattle): No more than 49 employees will be allowed to utilize the Physical Fitness Center in Auburn at any given time, and no more than 7 employees will be allowed to utilize the Physical Fitness Center in Seattle at any given time. In the event that more than these numbers wish to utilize the Center in any given month,

then the employees' service computation dates will be used to determine which employees will be allowed to utilize the Center during duty time, with the higher SCD's giving those employees placement on the list. A list will be maintained on a monthly basis for each Center, because it is likely that employees wishing to use the Center may change from month to month. Employees who were not permitted to utilize the Center based on application of their SCD, will have a new opportunity each month, since the users are likely to vary from month to month.

- Employees who are not allowed use of Center during duty hours based on the formula listed above and because of their SCD, may be permitted to utilize the Center by adjusting his/her starting and/or ending times so that the number of hours actually worked is consistent with his/her tour of duty, until such time as their SCD does allow them to receive duty time, again, based on the formula.
- On a monthly basis, the number of employees utilizing the Center during duty hours will be reviewed. The above formula will be applied for **both reducing duty time permitted and increasing duty time permitted** (based on the above formula) if the number of employees using the Center fluctuates.
- A sign-in sheet will be maintained in the Center for evaluating these numbers. In the event any employee whose SCD was applied as a tie-breaker fails to utilize the Center for four consecutive weeks, that employee will be unable to utilize his/her SCD as a tie-breaker for the following month, but will be allowed to use it the month thereafter. This applies only if that employee's SCD was used while any other employee was not allowed to use the Center due to the total number of employees using the Center.
- The above formula will be utilized and sign in sheets maintained to support application of this formula. In the event that this formula needs adjustment, then the Agency will notify the Union and the Parties will meet for the purpose of addressing the problem(s).
- The months of October, November, and December 2007 will be used for the purpose of gathering information via sign-in sheets on use at each Center by employees, and this information will be provided to the Union at the end of December. Application of the formula will begin in January 2008.

Also included in our final offer is that if a compelling need should occur, we are willing to augment the duty time used for the Centers in addition to the above formula.