

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE AIR FORCE  
LUKE AIR FORCE BASE  
LUKE AFB, ARIZONA

and

LOCAL 1547, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 07 FSIP 26

**DECISION AND ORDER**

Local 1547, American Federation of Government Employees, 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 Air Force, Luke Air Force Base (AFB), Luke AFB, Arizona (Employer).

After investigation of the request for assistance concerning the Employer's decision to conduct a reduction in force (RIF) affecting bargaining-unit employees, the Panel determined to assert jurisdiction over two of the four issues in the parties' dispute and to resolve them through single written submissions.<sup>1/</sup> 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.

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<sup>1/</sup> The Panel declined jurisdiction over issues involving: (1) the abolishment of encumbered positions by RIF Service Computation Date; and (2) the placing of all RIF actions on hold until all probationary excepted service positions become competitive service positions, because the Employer raised questions concerning its obligation to bargain over the Union's proposals.

## **BACKGROUND**

The Employer is responsible for training F-16 fighter pilots while maintaining a high state of expeditionary responsiveness. The Union represents 888 employees who work in a variety of trade, craft, clerical, and technical positions, GS-1 through -12, WG-3 through -14, and WL-7 through -10. Approximately 80 bargaining-unit employees will be affected by the RIF. The parties' collective bargaining agreement (CBA) expired on December 3, 1996; however, its terms and conditions will continue in effect until a new agreement is negotiated.

## **ISSUES AT IMPASSE**

The parties disagree over whether: (1) the Employer should be required to provide the Union with RIF retention registers that include the names of non-bargaining unit employees; and (2) bargaining-unit employees should be offered vacant National Security Personnel System (NSPS) positions for which they are qualified in lieu of separation.

## **POSITIONS OF THE PARTIES**

### **1. Retention Registers**

#### **a. The Union's Position**

The Union proposes that the Employer provide, upon request, a complete copy of all retention registers concerning bargaining-unit positions. The retention registers would be provided in hard copy, printed form, with only information protected by the Privacy Act removed. Its proposal should be adopted because it comports with § 7114(b)(4) of the Statute which requires an agency to furnish an exclusive representative with information "that will enable [it] to effectively carry out its representational responsibilities." Providing the full retention register "with no altering or manipulations" would ensure that the RIF is "administered in a fair and equitable manner." Without the RIF document "in its entirety," including the names of non-bargaining-unit employees, the Union would be unable to perform its representational duties. Thus, the proposal is appropriate because the names of non-bargaining-unit employees as they appear on the retention register "are necessary" within the meaning of the Statute.

b. The Employer's Position

The Employer proposes to provide the Union with a hard copy, in printed form, of the sections of the retention register that apply to bargaining-unit employees as of the date RIF notices were sent to employees. Employees' social security numbers and the names of NSPS employees would be removed from the list. The proposal should be adopted because "information from the retention register regarding non-bargaining employees is not necessary for the Union to perform its representational functions." While RIF retention registers would have to be manually redacted prior to providing the information to the Union, "such information would not compromise the integrity of the RIF retention registers in any way."

**CONCLUSION**

Having carefully considered the evidence and arguments presented by the parties, we shall order the adoption of the Union's proposal. In this regard, we believe that it has demonstrated a legitimate need for complete retention registers so it can assess whether the RIF has been conducted in accordance with the law, regulations, and the CBA. To the extent the Employer is concerned about releasing information protected by the Privacy Act, its concerns can be assuaged by sanitizing the retention registers before providing them to the Union.

**2. Vacant NSPS Positions**

a. The Union's Position

The Union proposes that before any bargaining-unit employee is separated because of the RIF, he or she be offered vacant NSPS positions for which they qualify. The proposal would "lessen the impact of the RIF" on the employees it represents. Prior to the creation of NSPS, "bargaining-unit employees would have appeared on the same RIF retention register as [] employees who are currently part of NSPS," and would have been offered those vacant positions without any bargaining, as the Office of Personnel Management (OPM) intended. The proposal is negotiable because it "does not have an effect on any occupied positions; its proposal only effects vacant NSPS positions." If there is a vacant NSPS position, "there should be no reason that it shouldn't be offered to a bargaining-unit employee in lieu of separation." The Employer, on the other hand, is attempting to use its discretion to not give bargaining-unit employees vacant

NSPS positions.

b. The Employer's Position

The Union should be ordered to withdraw its proposal as "there is no jurisdiction [for the Panel] to decide whether the [Employer] should bargain over making employees eligible for positions under the [NSPS]." In support of this position, the proposal is nonnegotiable because it "would directly implicate persons outside a union's bargaining unit."<sup>2/</sup> Further, the proposal is inconsistent with the Department of Defense (DoD), NSPS Workforce Shaping Issuance, DoD 1400.25-M, Subchapter 1960, which states that "components are not required to offer vacant positions," but may do so to eliminate or mitigate the disruption and impact of a RIF.

**CONCLUSION**

After thoroughly examining the parties' arguments on this issue, we are persuaded that the Employer's position should be adopted. In our view, the Union's proposal is inconsistent with NSPS's Workforce Shaping Issuance, which reflects Congressional intent to grant DoD the authority to create its own personnel system. Accordingly, we shall order the Union to withdraw its proposal.

**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:

**1. Retention Registers**

The parties shall adopt the Union's proposal.

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<sup>2/</sup> In *AFGE, Local 32 and United States Office of Personnel Management (OPM)*, 51 FLRA 491 (1995), *aff'd*, *AFGE, Local 32 v. FLRA*, 110 F.3d 810 (D.C. Cir. 1997), the FLRA found that a union proposal to define competitive areas outside the agency's duty to negotiate because it would govern the working conditions of supervisors at OPM.

**2. Vacant NSPS Positions**

The Union shall withdraw its proposal.

By direction of the Panel.

H. Joseph Schimansky  
Executive Director

June 1, 2007  
Washington, D.C.