

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF AGRICULTURE
FARM SERVICE AND RISK MANAGEMENT
AGENCIES
WASHINGTON, D.C.

and

LOCAL 3925, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO

Case No. 07 FSIP 20

DECISION AND ORDER

The Department of Agriculture, Farm Service and Risk Management Agencies, 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 3925, American Federation of State, County and Municipal Employees, AFL-CIO (Union).

Following an investigation of the request for assistance, the Panel determined that the dispute, which arose during negotiations over a successor collective-bargaining agreement (CBA) and concerns procedures for earning credit hours, should be resolved through an informal conference with Special Assistant to the Chairman Victoria L. Dutcher (Panel Representative). The parties were informed that if a complete settlement was not reached during the informal conference, the Panel Representative would notify the Panel of the status of the dispute, including the parties' final offers, and recommendations for resolving the impasse. After considering this information, the Panel would take whatever action it deems appropriate, which may include the issuance of a binding decision.

Pursuant to the Panel's procedural determination, the parties' representatives met with Panel Representative Dutcher

on February 9, 2007, in the Panel's offices in Washington, D.C. During the course of that meeting they were able to resolve two other issues in their CBA concerning the continuation of a partnership council and the starting time for work. The parties remain at odds, however, over procedures for earning credit hours. In accordance with the Panel's procedural determination, the parties submitted their final offers and filed written statements of position concerning the issue. The Panel has now considered the entire record.

BACKGROUND

The mission of the Farm Service Agency is to administer farm commodity and conservation programs for farmers and make farm ownership and operating loans; it also provides emergency conservation and assistance programs to farmers. The Risk Management Agency helps to ensure economic stability for agriculture by providing producers with a sound system of crop insurance that covers losses due to drought, excessive moisture, hail, wind, frost, insects, and disease. The Union represents a bargaining unit which consists of approximately 500 professional and non-professional employees in both agencies who are stationed in the Employer's Washington, D.C., headquarters office. Typical bargaining-unit positions are agricultural program specialist (GS-13 and -14) and secretary. The parties' current CBA, which was to have expired in 2006, remains in effect until a successor agreement is implemented.

ISSUE

Essentially, the parties disagree over whether to retain a provision in Article 6, Section E.3(a) of the current CBA that permits employees to earn credit hours^{1/} without supervisory approval.

1/ Under the current CBA, Article 6, Section E.1 the parties define credit hours as follows:

Credit hours are credit for work performed by an employee on a Maxiflex or Variable Day schedule in excess of their scheduled tour of duty on any scheduled workday for work performed between 6:30 a.m. and 6:30 p.m. Monday through Friday in order to vary the length of a subsequent workday or workweek.

POSITIONS OF THE PARTIES

1. The Union's Position

Under the Union's proposal, employees would not have to obtain supervisory approval prior to working credit hours; the supervisor would have the right to determine that appropriate work is available. Working credit hours would continue to be at the discretion of the employee with credit hours to be earned primarily to meet the legitimate needs of the agency and not solely for the convenience of the employee. For example, use of credit hours to effect a temporary or permanent modification of the employee's work schedule would not be a legitimate use of credit hours. Whenever possible, the Employer and employee would make a reasonable effort to communicate their mutual expectations before a credit hour is earned. In this regard, if possible, the employee would inform his immediate supervisor via e-mail or telephone of his intention prior to earning credit hours. The Employer and the employee would work proactively to resolve any dispute over the earning of credit hours.

The Union contends that its proposal attempts to balance the needs of the agency and the employees. In this regard, it would maintain a benefit that has been in effect under the current and preceding CBAs; however, wording has been added that would promote greater communication between the employee and supervisor as to when the employee intends to work credit hours and their mutual expectations in regard to working credit hours. Significantly, the proposal would allow bargaining-unit employees, many of whom are professionals, to better manage their workload. Furthermore, the proposal would prevent an employee from working credit hours in order to practically create or effectively change a work hour schedule that otherwise would require supervisory approval.

2. The Employer's Position

The Employer proposes that "(t)he working of credit hours is conditioned on the availability of appropriate work and the supervisor reserves the right to determine that work is appropriate for earning credit hours. Prior supervisory approval is required for working credit hours." It maintains that the working of credit hours "is considered" an assignment of work, "a management right covered by 5 U.S.C. § 7106(a)(1)(B)." Moreover, under 5 U.S.C. § 6122(b), "an agency may establish limitations on how credit hours are earned and the number of credit hours that may be earned," and an employee

electing to earn credit hours "is subject to limitations prescribed by an agency to ensure that the duties and responsibilities of a position are fulfilled."

The provisions in the current CBA permit employees to earn credit hours without supervisory approval, yet supervisors retain the right to determine which work is appropriate for employees to earn credit hours. Requiring supervisory approval to work credit hours would eliminate the ambiguity in the current contract language that has resulted in grievances. Essentially, "[t]he uncontrolled ability to earn credit hours can lead to the earning of such hours for non work-related reasons. For example, some employees are using the provision as a matter of convenience," adjusting arrival and departure times, resulting in an arbitrary change in an employee's work schedule. Furthermore, "[c]redit hours without supervisory approval were implemented to be consistent with OPM rules; therefore, to continue the consistency with OPM rules, credit hours with supervisory approval should be implemented." It is also consistent with management's implementation of a "policy for non-bargaining employees that requires supervisory approval before earning credit hours." Supervisory approval of credit hours would allow supervisors greater opportunity to manage the work that is being performed by all employees who are eligible to earn credit hours.

CONCLUSIONS

After carefully considering the parties' proposals and arguments on this issue we shall order the impasse resolved on the basis of the Employer's final offer. Preliminarily, the Employer appears to be asserting that the Union's proposal interferes with management's right to assign work. In American Federation of Government Employees, Local 1934 and Department of the Air Force, 3415 ABG, Lowry AFB, Colorado, 23 FLRA 872, 873 (1986), however, the Federal Labor Relations Authority held that alternate work schedules, which include schedules involving credit hours, are fully negotiable subject only to the provisions of the Federal Employees Flexible and Compressed Work Schedules Act (Act), 5 U.S.C. § 6120 *et seq.* Although the Employer also claims that § 6122(b) of the Act permits management to establish limitations on how credit hours are earned, it has failed to meet the criteria set forth in that provision. In this regard, the provision requires the head of the agency to determine that a schedule involving the accumulation of credit hours is substantially disrupting the agency's ability to function or is causing additional costs to

be incurred. Neither of these claims has been made by the agency head or his or her representatives in this case. Thus, to the extent that the Employer is raising questions concerning its duty to bargain over the Union's proposal, its contentions are hereby rejected.

Turning to the merits of the issue, modifying the current contract language to include a requirement for supervisory approval before employees work credit hours, as the Employer proposes, would allow supervisors to better manage the work to be performed by employees, eliminate the ambiguity in the current contract provisions that has generated grievances, and still give employees a measure of control over their workloads by allowing them to initiate requests for earning credit hours. Moreover, the Employer's proposal that credit hours work should be approved in advance by a supervisor is in accordance with the most recent guidance to agencies issued by OPM. Accordingly, the parties shall adopt the Employer's final offer.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the parties to adopt the Employer's proposal.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

April 10, 2007
Washington, D.C.