United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF COMMERCE U.S. PATENT AND TRADEMARK OFFICE ALEXANDRIA, VIRGINIA and CHAPTER 245, NATIONAL TREASURY EMPLOYEES UNION	Case Nos. 07 FSIP 89 and 07 FSIP 91

DECISION AND ORDER

The Department of Commerce, U.S. Patent and Trademark Office, Alexandria, Virginia (Employer or Office) and Chapter 245, National Treasury Employees Union (NTEU or Union), filed separate requests 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.

Following an investigation of these consolidated requests, which involve the Employer's decision to implement a new performance appraisal plan (PAP) for GS-9/11/12 Trademark examining attorneys, the Panel asserted jurisdiction and determined to assist the parties through an informal conference with Panel Member Andrea Fischer Newman at the Panel's office in Washington, D.C. The parties were also informed that, if a complete settlement was not reached during the informal conference, Member Newman would notify the Panel of the status of the dispute, including the parties' final offers and her recommendations for resolving the matter. The parties were further advised that, after considering this information, the Panel may impose either party's final offer on a package basis, to the extent it otherwise appears to be lawful, to resolve the impasse.

Pursuant to this procedural determination, Member Newman conducted an informal conference with the parties on December 14, 2007. Although 19 of the 27 issues were resolved, at the conclusion of the meeting the parties were given instructions to submit their final offers to the Panel with supporting statements of position.[1/] Member Newman has reported to the Panel and it has now considered the entire record for the remaining 8 of the original 27 issues.

BACKGROUND

The Employer's mission is to issue patents and register trademarks. The Union represents approximately 430 professional employees who work primarily as examining attorneys (GS-11 through -14) reviewing trademark applications and making recommendations on whether trademarks will be registered.[2/] The parties' collective-bargaining agreement (CBA) was scheduled to expire on January 19, 2008; it has been continued beyond the expiration date. Less than 25 percent of the bargaining unit is employed at the GS-9 through -12 grade levels. The current PAP covering this group has been in effect since 1997. The Employer is proposing to align the PAP for lower graded professionals with the PAP for the GS-13 and -14 examining attorneys.[3/]

1/ After the close of the meeting, there was some disagreement between the parties over whether they were permitted to attach documentary evidence to their statements of position. To rectify the matter, the Employer was permitted to submit documentary evidence along with a brief statement of its relevance. Additionally, the Union requested and was permitted to respond, in writing, to an allegation by the Employer that Union Proposal 9, under Section II.A. "Pre-Production Training Period," is nonnegotiable.

2/ Each year, the Employer receives approximately 400,000 applications, filed mostly electronically, to register a trademark.

3/ In Department of Commerce, U.S. Patent and Trademark Office, Alexandria, Virginia and Chapter 245, National Treasury Employees Union, Case Nos. 04 FSIP 116 and 117 (March 25, 2005), Panel Release No. 475, the Panel assisted the parties in the resolution of their dispute over the impact and implementation of a new PAP for Trademark examining attorneys employed at the GS-13 and 14 levels.

ISSUES AT IMPASSE

The issues before the Panel are: (1) whether policies and practices should be reduced to writing; (2) the duration of the training period for new examiners; (3) the ability to transfer "balanced disposals" (BDs) (points for completing certain actions on a trademark application) from one quarter to another[4/]; (4) adjustments to production requirements when an examiner is away from work; (5) the transition phase known as the "ramp-up" period between the training period and full production; (6) adjustments to quarterly production requirements when an examiner takes more than 26 hours of annual leave in a quarter; (7) whether examiner errors on trademark applications made while the examiner is under the current PAP should be counted against the examiner under the soon-to-be implemented PAP; and (8) documentation by supervisors of "excellent" work.

POSITIONS OF THE PARTIES

1. Introductory Proposals

a. The Union's Position

The Union proposes that "(m)anagement will put as many policies and procedures in writing as practicable." Its proposal would give the Employer the opportunity to provide consistent guidance to examiners concerning office procedures. Since examiners will have uniform performance requirements under the new PAP, depending on their grade level, they also should be provided with guidance on standard operating procedures. In the past, there have been instances when management guidance on case handling and office practices and procedures has not been disseminated to all examiners. Committing policies and procedures to writing would not be burdensome on the Employer; rather, it would help all examiners understand their jobs and perform tasks consistently and may help eliminate situations where some examiners are given lower ratings because of unclearly communicated practices.

4/ Under the new PAP, examiners will have production goals each quarter on which they will be evaluated. Production, essentially, is measured in terms of the number of balanced disposals an examiner has accrued during the quarter.

b. The Employer's Position

The Employer has no counter offer. It would have the Panel order the Union to withdraw its proposal because it has nothing to do with the impact and implementation of the new PAP. The provision could result in numerous disputes between the parties, leading to grievances, over whether a particular procedure should have been reduced to writing, and/or whether an examiner may be held to a procedure that is not in writing.

CONCLUSIONS

After carefully considering the parties positions on this issue, we are persuaded by the Employer's position on this matter. Contrary to the Union's assertion, it may be overly burdensome on management to reduce all practices to writing. Furthermore, it gives rise to questions over what should be reduced to writing and, thereby, it may lead to grievances over matters that were not reduced to writing but the Union contends should have been. Finally, it is not clear how many employees have received, let alone been adversely affected by, conflicting instructions. Accordingly, we shall order the Union to withdraw its proposal.

2. Section II. Pendency, A. Pre-Production Training Period, 9

a. The Union's Position

The Union proposes the following:

> To fully support the Office's production and quality goals under the new PAP and consistent with the Office's long standing practice, the "initial pre-production training period" for newly-hired GS-9/11 examining attorneys may be defined as a minimum of 12 weeks, or 60 business days, not including Federal holidays. If the "initial pre-production training period" varies from 12 weeks, then management will consider the applicability and reasonableness of the performance standards under the new PAP.

The Union maintains that under the wording it proposes, the Employer would retain the discretion to continue the 8-year practice of providing new examiners with a minimum of 12 weeks of training. Essentially, it agrees with management that

trainee examiners learn at different rates and, therefore, the Employer should have the discretion to adjust the duration of the training period to meet the needs required. This would include the option to continue to have a training program that lasts for at least 12 weeks. The proposal, however, does not limit the Employer's right to have a shorter training period; rather, the Employer would retain that discretion, as part of its right to assign work. In the event that the Employer determines to alter the length of the usual 12-week training period, it only would be required to "consider" the impact of that change on the performance standards examiners will be held to under the new PAP. A substantially similar proposal has been held to be negotiable by the FLRA.[5/] Essentially, the intent of the last sentence of the proposal is to place the Employer on notice that if it changes the duration of the training period from 12 weeks, it must consider the impact of that change as it concerns the "applicability and reasonableness" of the performance standard it imposes on employees; specifically, the requirement that new employees have 100 "disposable actions" during the first 4 months of their employment.

b. The Employer's Position

The Employer does not have a counter offer. It argues that the Union's proposal is nonnegotiable because it would limit or prescribe the duration of training. Although the Union uses the word "may" in the first sentence of the proposal, suggesting that there is some discretion afforded to management, the proposal as a whole suggests that the exercise of discretion would trigger the undefined "consideration" described above, and significantly impair the Employer's ability to adjust the duration of training classes for its new examiners. On the

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5/ According to the Union, the FLRA has found negotiable a substantively similar proposal in American Federation of State, County and Municipal Employees, Local 2910, AFL-CIO and Library of Congress, 15 FLRA 541 (1984) (Library of Congress). In that case, which involves a proposal that would require a mandatory training period of not less than 90 days to allow reassigned or transferred employees the time to acquire the skills and proficiency necessary to satisfactorily perform the duties and responsibilities of their new positions, the FLRA determined the proposal to be negotiable because it did not require the employer to actively provide training, but merely to allow employees "a training period" so they could "get up to speed" in their new positions.

merits of the proposal, there is no support for the Union's desire to uniformly retain a 12-week training period when it has been the Employer's experience some trainees have previous trademark experience and are adept at mastering the technology and subject matter in a shorter period of time. The proposal would preclude the Employer from acknowledging variations among training classes unless it meets the Union's undefined "consider[ation of] the applicability and reasonableness of the performance standards under the new PAP." The extent of management's "consideration" is unclear and, therefore, likely to lead to litigation.

CONCLUSIONS

After evaluating the parties' positions on the training period, we shall order the adoption of a modified version of the Union's proposal that eliminates the second sentence requiring the Employer to reconsider its performance standards in the event it deviates from a 12-week training period. As to the proposal's first sentence, in agreement with the Union we interpret it to provide the Employer with unfettered discretion to determine the duration of the training period. The second sentence of the Union's proposal, however, is ambiguous in that it does not specify the degree to which the Employer would have to "consider the applicability and reasonableness of the performance standards" in the event that it modifies the duration of the training period from 12 weeks. Thus, the provision could spawn grievances and be difficult for the Union to enforce should it ever come before an arbitrator.

3. Section II. Pendency, C. Balanced Disposal Transfer System, 14 [6/]

a. The Union's Position

In essence, the Union proposes that a GS-12 examiner be permitted to transfer to the current quarter up to 50 BDs from the previous quarter as long as the examiner's production for

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6/ During the course of examining a trademark application, employees take several actions on the application for which they earn BDs. The same system exists for more senior attorneys and examiners at the GS-13/14 levels. The parties disagree over whether GS-12 employees should also have the ability to move BDs between quarters to help them maintain production requirements.

both the current and previous quarters is at least at the "marginal" level. Only during the second quarter of a fiscal year would an examiner be permitted to transfer 25 BDs to be earned in that quarter back to the first quarter. Requests to transfer BDs would be made in writing. The transfer of BDs would be for the determination of the quarterly score only and would not be considered in determining the level of award for which the examiner may be eligible, within-grade increases or promotions. To help boost a trainee's production level, BDs may be transferred if the examiner's total number of BDs in either the transferring or receiving quarter is below "marginal." An examiner may not transfer BDs into any quarter where the examiner is subject to a performance improvement plan. Transfers may not take place between rating years.

The Union asserts that its proposal is consistent with the BD transfer system which the Employer proposed, and the Panel adopted in 2005, and currently is in place for GS-13 and GS-14 examiners. The BD transfer system would not be available to GS-9 and GS-11 examiners, who are likely to be entry-level Government employees, so the Employer would have the opportunity to evaluate their performance without a system that "shores up" quarters where BDs may be lacking. The purpose of the BD transfer system is to provide a benefit to examiners who may be absent from work for extended periods during a quarter due to sick or annual leave usage, but who still must maintain their production levels; thus, it would enable employees to balance their quarterly ratings. Absence from work generally does not relieve an employee from meeting production goals. The proposal does not allow employees to reduce their production requirements during a quarter, but merely to transfer BDs into quarters where, for example, a production shortfall could be anticipated because an examiner knows he/she will be away on extended leave. The proposal would accomplish a major objective of the new PAP which is to "align the performance goals of the GS-9/11/12 examining attorneys with the recently implemented quarterly award system, the goals of the Agency, and the performance plan currently in place for the GS-13/14 examining attorneys." The proposal would not, in any way, undermine the Employer's production goals. Allowing 50 BDs to be transferred each quarter is an appropriate number because it is the equivalent of 4.5 days of work. The "borrow back" feature under the Union's proposal is significant because examiners tend to work fewer hours during the first quarter of the fiscal year as a result of numerous Federal holidays and the taking of annual leave during the holiday. Under the Union's proposal, more examiners would be able to use the balance transfer system because it would be

open to those who are producing at a "marginal level" but who have not been rated "marginal."

b. The Employer's Position

The Employer proposes that during each of the first, second and third quarters of a fiscal year, a GS-12 examiner may be permitted to transfer forward 20 BDs into the next quarter. A written request for the transfer would be required. An examiner must be producing at the fully successful level in both quarters to be eligible to make the transfers. An examiner's production score for the quarter would be determined after the BD transfer has occurred. The requested transfer would not be given final approval if the total number of BDs produced by the examiner during the quarter, aside from those transferred from another quarter, does not meet the fully successful level. BDs transferred into any quarter would not be considered in connection with the level of award for which the examiner may be eligible or for a within-grade increase or promotion.

Under the Employer's proposal, there would not be any interference with management's ability to evaluate the "real-time performance" of GS-9/11/12 examiners during their first or second year of employment under the new PAP. These examiners will be serving a trial period, during which they could be summarily removed within the first 2 years of employment. Unlike the Union's proposal, it would not permit examiners to use the transfer system to mask a lack of productivity because only a limited number of BDs (20) could be transferred. Since GS-12 examiners are new to the Federal government, they do not have significant annual and sick leave balances and, therefore, they would need only a small number of BDs transferred into a quarter to make up for their lack of production. The proposal balances the Employer's need to accurately evaluate a GS-12 examiner's performance with the need expressed by the Union for examiners in their second year of employment to offset excess leave used in one quarter with BDs earned in a previous quarter. Finally, to participate in the transfer process, the examiner's performance, in both the receiving and transferring quarters, should be "fully successful"; permitting any lower level of performance would frustrate the Employer's ability to make final retention decisions based on an accurate assessment of the GS-12 examiner's performance.

CONCLUSIONS

Upon careful consideration of the issues presented under this section, we are persuaded that the dispute should be resolved on the basis of the Union's proposal, which is essentially the same BD transfer system currently in effect for GS-13/14 examiners. Limiting the number of BDs that may be transferred to 20, as the Employer proposes, appears to be too small to make any significant difference in the quarterly totals. Accordingly, we shall order the adoption of the Union's proposal.

4. Section II. Pendency, D. Adjustments, 17

a. The Union's Position

The Union proposes the following:

> Management will consider all requests for adjustments and may grant reasonable adjustments as appropriate. Management may grant reasonable adjustment to production requirements for those with absences due to illness, disability, maternity/paternity, or part-time schedules. Management may grant reasonable adjustments to production requirements for mentoring, details and work projects, jury duty and military leave.

The Union maintains that its proposal is essentially the same as the Employer's because it would give management the discretion to grant or deny an examiner's request for an adjustment; the only difference is that it eliminates redundant wording. In this regard, there is no need to include the words "if appropriate" because management's discretion would be unqualified. The Union's proposal also deletes the word "extended," which appears in the Employer's proposal before "absences," because examiners should receive adjustments for sick leave taken, regardless of whether the absence is extended.

b. The Employer's Position

The Employer proposes the following wording:

> Management will consider all requests for adjustments and may grant reasonable adjustments as appropriate. Management may grant reasonable adjustments if appropriate to production requirements for those with

> extended absences from the office due to illness, disability, maternity/paternity, or part-time schedules. Management may grant reasonable adjustments if appropriate to production requirements for mentoring, details and work projects, jury duty, and military leave.

The Employer contends that the primary difference between the parties' proposals is that, under its wording, management may grant reasonable adjustments to production requirements for those with "extended" absences from the office due to illness, disability, maternity/paternity, or part-time schedules. Adjustments should only be granted in circumstances where absences from the office have been for extended periods of time. The same provision was imposed by the Panel to resolve the parties' previous impasse over the impact and implementation of the new PAP for higher graded GS-13/14 examiners. Furthermore, the Union has adopted similar wording in two other provisions in the parties' agreement and there is no rational basis why the same language should not be adopted in this section of the agreement as well.

CONCLUSIONS

After a thorough review of the evidence and arguments with respect to this issue, we shall order the adoption of the Employer's final offer to resolve the parties' dispute. Under the Union's proposal, supervisors would be required to consider granting adjustments to production requirements even when the absence is as short as a single day. The burden on supervisors appears to outweigh the benefit to employees, but more particularly, the requirement is inconsistent with other provisions in the parties' agreement. The Employer's proposal, on the other hand, would tend to provide continuity and, ultimately, consistency with regard to the treatment of extended absences on production requirements.

5. Section II. Pendency, E. Ramp-Up Proposal, 19

a. The Union's Position

The Union proposes the following:

> To fully support the Office's production and quality goals under the new PAP and consistent with the Office's long-standing practice, for the first 7 bi-

> weeks following completion of the initial pre-production period, newly-hired GS-9/11 examining attorneys may receive hourly adjustments to their production requirements for "non-examining" time. The hourly adjustments for "non-examining" time will be at a rate of 10 hours per bi-week for the first 3 bi-weeks, and 8 hours per bi-week for the next 4 bi-weeks. The total hourly adjustment is 62 hours. The BD requirement may be adjusted accordingly.

The Union asserts that new employees generally require a transition phase between the end of the 12-week training period and when they are in "full production" mode. During this transition phase, known as the "ramp-up" period, examiners have been permitted by the Employer to have some adjustment made to their production levels. The intent of the proposal is to continue the "ramp-up" period which is critical for an examiner to develop examination skills and meet the challenges of the performance standards. An adjustment of up to 62 hours during 7 bi-weeks (approximately 1 quarter of the fiscal year) is appropriate because it would help examiners improve the quality of their work, strengthen their abilities to increase their rate of production, learn how to work more efficiently and meet applicable deadlines. Moreover, the Federal Labor Relations Authority (FLRA) has found a proposal with a similar objective to be negotiable.[7/]

b. The Employer's Position

The Employer proposes that "(i)n order to facilitate the transition from training to a production environment, the Office may provide a biweekly adjustment during the first quarter following the pre-production training period depending on the

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7/ In Patent Office Professional Association and Department of Commerce, Patent and Trademark Office, 47 FLRA 10, 56 (1993), the FLRA considered the negotiability of a proposal that would give patent examiners 3 hours of non-examining time to familiarize themselves with procedures for handling reexaminations the first time they are assigned. The FLRA concluded that the proposal did not excessively interfere with management's right to assign work because the burden on management's right was "insubstantial" compared to the benefits afforded to employees and management in terms of improved work product. Thus, the FLRA concluded that the proposal constituted a negotiable "appropriate arrangement" under section 7106(b)(3) of the Statute.

Office's determination of the needs of the particular training class." The provision would preserve its discretion to determine what adjustment may be needed for employees. Since not all employees learn at the same rate, the proposal would allow management to tailor the "ramp-up" period according to what may be appropriate for a particular training class. As to the Union's proposal, its negotiability is doubtful because it would interfere with management's exclusive right to determine production standards under the new PAP; in this regard, the proposal would call upon management to make corresponding adjustments to performance expectations when production time is reduced by 62 hours.

CONCLUSIONS

Upon careful consideration of the positions presented by the parties, we are persuaded that the Employer's proposal provides the more reasonable basis for settling the issue. Although the Union's proposal would give the Employer the discretion to determine that a ramp-up period is needed, once that determination is made, the Employer appears to be locked into providing adjustments at specified rates, over specified periods, that total exactly 62 hours, regardless of what the needs of a particular training class may be. The Employer's proposal is preferable because it allows managers adequate flexibility to determine the extent and duration of any adjustment to productivity that may be needed by employees before they transition into full production mode. Accordingly, we shall order its adoption.

6. Section II. Pendency, F. Annual/Sick Leave, 33

a. The Union's Position

The Union's proposal is that "(m)anagement has determined that 26 hours of annual leave have been factored into the model. A reasonable adjustment will be provided for examining attorneys who take annual leave in excess of 26 hours per quarter." It should be adopted by the Panel because not all newly-hired examiners earn the minimum of 104 hours of annual leave each year (or 26 hours a quarter). Some may be new to the Office but are in a higher leave-earning category because they have prior Federal service. Those who have earned the right to use more than 26 hours of leave during a quarter also should receive some adjustment to their production requirements. Without such adjustments, the Employer effectively would be penalizing any

examiner who uses more than 26 hours of annual leave in a quarter.

b. The Employer's Position

The Employer does not have a counter offer, and argues that the Union should be ordered to withdraw its proposed wording. Essentially, it contends that there is no justification for the adjustment proposed by the Union. In this regard, the Employer's experience over the past few years with the PAP for the GS-13/14 examiners, which also includes quarterly performance goals, demonstrates that their production has not been adversely affected when they take more than 26 hours of annual leave during a quarterly production period. In fact, more employees receive outstanding production ratings under the new quarterly system than the previous system. It is anticipated, therefore, that the same would be true for lower graded examiners who also should not receive any adjustment to their production goals when they take more than 26 hours of annual leave in a quarter. Moreover, a major objective of the new PAP for GS-9/11/12 examiners is to align their standards with those of GS-13/14 examiners who have been on the new system for 2 years. The Union proposal would undermine that goal. Finally, its adoption also would lead to uneven application because management would be required to make adjustments in production goals when an examiner uses more than 26 hours of annual leave during a quarter but there would be no concomitant adjustment when an examiner uses less than 26 hours of annual leave in a quarter.

CONCLUSIONS

Having considered the evidence and arguments presented by the parties on this issue, we shall order the Union to withdraw its proposal. As the record reflects, the Employer currently does not adjust production requirements for examiners at the GS-13 or -14 levels who use more than 26 hours of annual leave in a quarter. The Union has failed to substantiate that there is a greater need for lower graded examiners, who are less likely to have large balances of accrued leave, to have their production goals modified should they use more than 26 hours of annual leave in a quarter. We note, however, that GS-12 employees who are on annual leave for more than 26 hours in a quarter may avail themselves of the BD transfer system in the event they desire some relief in their production requirement for the quarter.

7. Section III. Quality, 26

a. The Union's Position

The Union proposes that:

> Any error or deficiency finding on work completed before implementation of the new GS-9/11/12 PAP will not count toward the performance rating for GS-12 examiners under the new PAP. Those errors or deficiencies can be counted as appropriate under the current PAP for purposes of progress review and can be considered in the final rating for the year.

The Union asserts that work performed under the PAP currently in place should be evaluated under that PAP. It would be unfair to evaluate examiners' performance under the new PAP's increased quality and production standards when the work was performed while the current PAP is in effect. Moreover, due process mandates that employees have notice of the standards against which they are evaluated before they perform the work. The proposal is not intended to, nor would it, hinder the Employer from evaluating the quality of an examiner's work.

b. The Employer's Position

The Employer opposes the Union's proposal and asks the Panel to order that it be withdrawn. The new PAP does not change trademark examining rules, policies or procedures, and there is nothing in the current PAP that would be viewed as less acceptable under the new PAP. Because examiners will be working to the same specifications under both the current and new PAPs, there is no need for the Union's proposal. Furthermore, Article 12, Section (1)(H) of the parties' CBA already provides protection to employees because it permits the rating official to assign a fair rating if the application of the rating system leads to an unfair or unreasonable overall performance rating. The Union's proposal, without explanation, would treat differently GS-9/11 and GS-12 examiners in that those at the GS-9/11 grade levels may be held accountable for errors committed before implementation of the new PAP, but GS-12 examiners may not. Thus, it would force the Employer to ignore certain errors and deficiencies in the work product of GS-12 examiners. For example, if a GS-12 examiner commits errors on the day before the new PAP is implemented, but the errors are not discovered until after the new PAP goes into effect, the Employer then must ignore them. The Employer should have the ability to consider

all work, and all errors, in accurately appraising a probationary examiner's performance.

CONCLUSIONS

Having fully evaluated the parties' positions on this issue, we shall order that it be resolved on the basis of the Union's proposal. The proposal addresses an issue that, simply put, is: employees be evaluated under the performance plan in place when the work was performed. While issues may arise during the transition from one PAP to another, as the Employer points out, their resolution should not have the effect of depriving employees of due process.

8. Section III. Quality, 44

a. The Union's Position

The Union proposes that "(a)ny 'excellent' work, as the term is used in the new GS-9/11/12 PAP, should be documented and provided to the employee." According to the Union, its proposal would help examiners know how they are progressing under the new PAP. By requiring that documentation be provided to them, examiners would develop an understanding of what constitutes excellent work, so they may incorporate this knowledge into their examination practice.

b. The Employer's Position

The Employer contends that the Union's proposal is without merit and, therefore, should not be adopted. For one thing, it would place a burdensome requirement on management. Since new examiners typically process over 1,200 trademark applications each year, requiring managers to provide documentation to employees each time they find "excellent" work among work products should be a common occurrence and so would surely preclude managers from performing many of their other tasks. Furthermore, the provision may result in grievances over what constitutes "excellent" work. The proposal also is unnecessary as the parties already have agreed that the Employer shall furnish specific examples of "excellent" office actions, as well as sample documents which demonstrate the difference between "excellent," "satisfactory," and "deficient" actions. Thus, examiners already would have information available to help them understand what constitutes "excellent" work.

CONCLUSIONS

After carefully considering the parties' positions on this issue, we shall order the Union to withdraw its proposal. It would be administratively burdensome on management to provide the sort of documentary feedback to employees on their performance that would be required under the proposal. Adoption of the proposal also could lead to unnecessary disputes over what constitutes "excellent" work. The Union's objective could be achieved in other ways, *i.e.*, through discussions between examiners and their supervisors during performance reviews.

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. **Section I. Introductory Proposals**

The Union shall withdraw its proposal.

2. **Section II. Pendency, A. Pre-Production Training Period, 9**

The parties shall adopt only the first sentence of the Union's proposal.

3. **Section II. Pendency, C. Balanced Disposal Transfer System, 14**

The parties shall adopt the Union's proposal.

4. **Section II. Pendency, D. Adjustments, 17**

The parties shall adopt the Employer's proposal.

5. **Section II. Pendency, E. Ramp-Up Proposal, 19**

The parties shall adopt the Employer's proposal.

6. Section II. Pendency, F. Annual/Sick Leave, 33

The Union shall withdraw its proposal.

7. Section III. Quality, 26

The parties shall adopt the Union's proposal.

8. Section III. Quality, 44

The Union shall withdraw its proposal.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

May 30, 2008
Washington, D.C.