

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY
KANSAS CITY, MISSOURI

and

CHAPTER 264, NATIONAL TREASURY
EMPLOYEES UNION

Case No. 08 FSIP 80

DECISION AND ORDER

The Department of Agriculture, Farm Service Agency, Kansas City, Missouri (Employer or FSA) 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 Chapter 264, National Treasury Employees Union (Union).

Following an investigation of the request for assistance, arising from bargaining over ground rules for a successor collective-bargaining agreement (CBA), the Panel determined that the dispute should be resolved through single written submissions from the parties. The parties were advised that, after considering the entire record, the Panel would take whatever action it deems appropriate to resolve the impasse, which could include the issuance of a binding decision. The parties' written submissions, which included their final offers with supporting evidence and arguments, were received pursuant to this procedure. The Panel has now considered the entire record.

BACKGROUND

The Employer's mission is twofold: (1) to procure commodities for donation and feeding programs, and (2) to provide financial services, information technology assistance and human resources services for all state and county offices of the FSA in the United States. The Union represents a bargaining

unit consisting of approximately 650 professional and non-professional employees in the Kansas City FSA, including 60 warehouse employees stationed nationwide. Typical bargaining-unit positions are: management analyst, accountant, contract specialist, information technology specialist and merchandiser. The parties' current CBA, which was to have expired on November 30, 2007, has been extended while the parties pursue negotiations over a successor agreement. The parties began negotiations over a ground rules agreement in fall 2007; during the course of negotiations they were able to resolve all but three issues.

ISSUES AT IMPASSE

The following ground rules remain unresolved: (1) the selection and participation of a technical advisor/subject matter expert who would assist the parties during contract bargaining; (2) the time frame for the submission of the Union's proposals to management; and (3) impasse procedures.

POSITIONS OF THE PARTIES

1. Assistance of a Technical Advisor/Subject Matter Expert (TA/SME) During Bargaining^{1/}

a. The Employer's Position

The Employer proposes the following:

Either party will be able to direct technical

^{1/} The parties have reached agreement on the first portion of the provision. The agreed upon wording is as follows:

Technical Advisors/Subject Matter Experts.
Either party may, with 1-day advance notice, bring in a technical advisor (TA) or subject matter expert (SME). Upon mutual agreement, the 1-day advance notice may be waived. Absent mutual agreement, only one TA (or SME) may be present at negotiations at any given time. The TA (or SME) will be afforded the same rights as those afforded to team members pursuant to this agreement. The Employer agrees to pay full travel and *per diem*, for one warehouse examiner to participate in negotiations as a TA (or SME), for up to 5 consecutive days.

questions to the **TA**.^{2/} Such questions must be limited to the TA's expertise **as it relates to the bargaining unit**. Management and the Union will not interfere with the **SME's** ability to answer technical questions. Management will **identify and** make arrangements for the **SME** to be available to attend bargaining sessions, in person or remotely. The information provided by the **TA** does not represent the position of either party. Only FSA employees may serve as TA or SME.

The Employer contends that allowing management to identify the person to serve as the SME for the parties during bargaining is not only consistent with the parties' practice in other CBA negotiations, but also would help to ensure that person's presence at the bargaining table (either physically or via teleconference or video conference), and guarantee that the SME has actual knowledge of the bargaining unit.

b. The Union's Position

The Union proposes the following:

Either party will be able to direct technical questions to the **TA (or SME)**. Such questions must be limited to the **TA's (or SME's)** expertise. Management and the Union will not interfere with the **TA or (SME's)** ability to answer technical questions. Management will make arrangements for the **TA (or SME)** to be available to attend bargaining sessions, in person or remotely. The information provided by the **TA (or SME)** does not represent the position of either party. Only FSA employees may serve as TA or SME.

Referring to both "TA" and "SME" in the disputed sentences would be consistent with how those terms have been used in the portions of the provision upon which the parties already have agreed. The Union's proposal also would improve the quality of information that is exchanged during bargaining by eliminating restrictions on questions that may be posed to a TA or SME. Finally, it would allow the Union to identify a TA or SME for participation in bargaining sessions without having to rely on management's choice.

^{2/} The words in bold print indicate where the parties' proposals differ.

CONCLUSIONS

Having carefully evaluated the arguments presented on this issue, we shall order the adoption of a modified version of the Employer's proposal to resolve the dispute. The modifications will reflect consistent use of the term "TA/SME" throughout the provision and permit unrestricted questioning of the TA/SME during bargaining sessions. Allowing the TA/SME to answer questions on matters that do not relate solely to the bargaining unit could provide information to the bargaining teams that proves beneficial.

2. Time Frame for Submitting the Union's Proposals

a. The Employer's Position

The Employer proposes the following:

The Employer has provided all of its proposals to the Union. Within 60 days of the execution of these ground rules, the Union will provide the Employer with its proposals. This includes any new articles being presented for negotiations. Within 30 days of the Union providing its proposals, the parties will meet to begin negotiations on Articles already presented.^{3/}

Its proposed ground rule would provide the Union with a reasonable amount of time in which to submit contract proposals. The Union has been aware since October 2007 that management intended to reopen the contract and which provisions it would reopen. Since March 4, 2008, the Union has had a copy of management's proposals for a successor agreement. The Union already has had several months to start drafting its proposals and, therefore, it is reasonable to expect the Union to submit those proposals within 60 calendar days after execution of the ground rules agreement. Furthermore, the time frame proposed would keep the bargaining process moving along without undue delay.

b. The Union's Position

The Union's proposed wording mirrors the Employer's with

^{3/} The only matter in dispute in this provision is whether the Union should have 60 calendar days or 60 workdays to submit its proposals. The Employer's proposal refers to calendar days.

the exception that it seeks a period of 60 workdays from execution of the ground rules agreement to submit its proposals. This would not delay bargaining in any meaningful way. Moreover, it is consistent with the parties' past approach to negotiations wherein bargaining sessions and schedules are set to meet the competing time needs of the various members of both bargaining teams. The Employer had been planning to reopen the contract for some time so it has had a head start in drafting its proposals. The Union never intended to reopen the contract and is seeking significantly less time to respond with its proposals than management has had. While the Employer has full-time staff devoted to developing its proposals, the Union's bargaining team members have full time agency jobs that involve duties other than labor relations and proposal writing. Thus, the Union needs time to review the contract, communicate with the bargaining unit about desired changes, and to write proposals, all of which involves a time-consuming and resource-intensive process.

CONCLUSIONS

After fully considering the parties' proposals and positions on this issue, the Panel agrees that 60 calendar days provides sufficient time for the Union to submit its contract proposals to the Employer. Sixty workdays would add an extra month to the bargaining process and is unwarranted in circumstances where the Union has had management's proposals since March 2008. Accordingly, we shall order the parties to adopt the Employer's proposal to resolve their dispute.

3. Impasse Procedures

a. The Employer's Position

In essence, the Employer proposes that, should mediation fail to resolve all issues in term bargaining, either party would have the option of invoking the services of the Panel under 5 U.S.C. § 7119. Prior to taking such action, the party invoking the Panel's services would provide notice to the opposing party of its intention to take such action. In the alternative, by mutual agreement, the parties may use the services of a private arbitrator should any issues remain unresolved after mediation assistance is provided by the Federal Mediation and Conciliation Service (FMCS). Under this procedure, the parties jointly would request the Panel's approval to submit the remaining issues to an interest arbitrator who would be selected from a list provided by FMCS of

seven arbitrators in the Kansas City, Missouri area. Absent mutual agreement to select one of the seven arbitrators, the parties would strike names from the list, with the party making the first strike determined by a coin toss. The arbitrator selected would be authorized to employ mediation/arbitration techniques to resolve the outstanding issues, and issue a binding decision.

Its proposal would maintain management's statutory right to utilize the Panel's processes or, by mutual agreement of the parties, with the Panel's approval, they would be able to utilize the services of a private mediator/arbitrator. The same wording has been in the parties' last three ground rules agreements for contract negotiations.

b. The Union's Position

The Union basically proposes that should mediation with FMCS fail to resolve an impasse, either party could invoke a dispute resolution procedure whereby each submits the names of two private arbitrators in the Kansas City area, with selection of the neutral to be determined by striking names; the first strike would be made by the party that won a coin toss. The selected neutral would be authorized to use mediation/arbitration to resolve the outstanding issues. The neutral could meet with the parties for up to 10 days; if no resolution is reached, the neutral would issue a written report on the issues and make non-binding recommendations for their disposition. If a party refuses to accept the neutral's recommendations in their entirety, that party would pay all costs associated with the proceeding before the neutral. The costs would be shared equally, however, if the neutral's recommendations are adopted by both parties, they mutually agree to modify the recommendations so as to reach a complete and final agreement, or both parties reject one or more recommendations. The parties would have 60 days from receipt of the neutral's recommendations to inform each other whether they are acceptable in whole or in part. If the parties reject any of the neutral's recommendations, either party at the end of those 60 days may contact the Panel for assistance, pursuant to 5 U.S.C. § 7119 of the Statute. Finally, the parties would request that the Panel issue an order to show cause why the neutral's recommendations should not be adopted; generally, this would require the production of documentary evidence rather than mere argument.

The Union's proposed impasse procedure could result in

faster resolution of issues than the statutory process while preserving either party's right to use the services of the Panel should initial attempts at resolution with the neutral fail. Costs would be contained because the selected neutral would be required to reside in (or bill from) the local Kansas City area. Allowing the neutral the opportunity to meet with the parties for up to 10 days would ensure that the neutral has sufficient time to understand the issues and pose alternative solutions.

CONCLUSIONS

Upon complete review of the parties' positions on this issue we shall order them to withdraw their proposals and rely on the impasse resolution processes provided by the Statute. The Employer's first alternative proposal comes close to the statutory impasse procedure but its notice requirement is unnecessary because the Panel's regulations, 5 C.F.R. § 2471.5(a)(2), already state that a party filing a request for assistance must serve a copy of the request on the other side. While parties are free to mutually agree to an alternative dispute resolution process, they should not look to the Panel to impose one on an unwilling participant.

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 parties' failure 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 § 2471.11(a) of its regulations, hereby orders the following:

1. **Assistance of a Technical Advisor/Subject Matter Expert (TA/SME) During Bargaining**

The parties shall adopt the following wording:

Either party will be able to direct technical questions to the TA (or SME). Such questions must be limited to the TA's (or SME's) expertise. Management and the Union will not interfere with the TA's (or SME's) ability to answer technical questions. Management will identify and make arrangements for the TA (or SME) to be available to attend bargaining sessions, in person or remotely. The information provided by the TA (or SME) does not represent the

position of either party. Only FSA employees may serve as TA or SME.

2. Time Frame for Submitting the Union's Proposals

The parties shall adopt the Employer's final offer.

3. Impasse Procedures

The parties shall withdraw their proposals.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

October 29, 2008
Washington, D.C.