

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT
REGION IX
SAN FRANCISCO, CALIFORNIA

and

LOCAL 1450, NATIONAL FEDERATION OF
FEDERAL EMPLOYEES, FEDERAL
DISTRICT 1, IAM&AW, AFL-CIO

Case No. 06 FSIP 93

DECISION AND ORDER

Local 1450, National Federation of Federal Employees (NFFE), Federal District 1, IAM&AW, 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 Housing and Urban Development, Region IX, San Francisco, California (Employer).

After investigation of the request for assistance, the Panel asserted jurisdiction over the issue of whether the date of the bargaining unit's annual performance appraisal cycle should be changed, and determined to resolve the impasse through single written submissions from the parties. They were advised that, following receipt of their submissions, the Panel would take whatever action it deemed appropriate to resolve the matter, which could include the issuance of a *Decision and Order*. Written submissions were made pursuant to this procedure, and the Panel has now considered the entire record.

BACKGROUND

The Employer is one of 10 regions within the Department of Housing and Urban Development (HUD) responsible for programs that address America's housing needs, including improvement and development of the Nation's communities, and enforcement of fair

housing laws. The Union represents approximately 500 professional and non-professional bargaining-unit employees stationed in 10 offices within Region IX (the Pacific/Hawaii Region). Employees hold positions such as appraiser, architect, fair housing specialist, housing project manager, single-family housing specialist, and program assistant; typically, employees have technical, financial management and contracting skills. The parties' Labor-Management Agreement (LMA) is due to expire on May 13, 2008.

The change in the annual performance appraisal cycle is part of the Employer's decision to implement new performance elements and standards for two groups of employees in preparation for its participation in an Office of Personnel Management (OPM)-sponsored pilot program. The program is designed to hold employees accountable by establishing a results-oriented performance culture that aligns employee performance plans with organizational goals. In this regard, the Employer's Offices of Administration (OA) and Community Planning and Development (CPD) were selected by OPM to participate as a "pilot beta site." The initiative affects 4 bargaining unit employees in OA, whose new elements and standards were implemented in June 2006, and approximately 50 in CPD. The pilot program was to have been implemented for the remainder of FY 2006, at which time all HUD Region IX employees would be converted to the performance management system of the pilot beta site.

ISSUE AT IMPASSE

The parties disagree, among other things, over whether the annual performance appraisal period for bargaining unit employees should be changed from February 1 through January 31 to October 1 through September 30.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer's final offer is as follows:

1. All provisions of the current Labor-Management Agreement between HUD Region IX and NFFE Local 1450 will remain in effect, except that the performance appraisal period in Article 13, Section 13.04, will be changed to October 1 through September 30.

2. No new performance standards will be implemented for any employees without compliance with Article 13, Section 13.06, specifically, "Management shall encourage and facilitate employee participation in establishing performance standards." The Union will be invited to meetings with employees to discuss changes in their performance standards.

The implementation of its proposed performance appraisal period would align the appraisal cycle of the 500 employees represented by the Union with the other 9,000 employees in HUD, including supervisors/managers, and the employees represented by the American Federation of Government Employees and two other NFFE Locals. Its proposal was included in management's notification to the Union concerning HUD's participation in the OPM pilot beta site to implement a performance appraisal and awards system "by aligning employee performance plans with organizational goals and holding employees accountable." Moreover, the change it seeks is specifically permitted under Article 13, Section 13.04.A. of the parties' LMA.^{1/} To "alleviate" the Union's concern during bargaining that the initiative also would result in changes to performance appraisal procedures, the Employer proposed that all other provisions in the LMA would remain in effect. This includes Article 13, Section 13.06B, which states: "Management, however, retains the final decision on the number and content of critical elements and performance standards," a provision that is consistent with its statutory rights under Federal Labor Relations Authority case law.

2. The Union's Position

The following wording is proposed by the Union:

1. Every provision of the current LMA will stay in effect, including the current rating cycle period: February 1 - January 31.

2. No new performance system shall be implemented during the life of the current LMA, including the OPM

1/ Article 13, Performance Appraisal, Section 13.04.A.: Appraisal Cycle, states that:

The appraisal period is February 1 through January 31. Management will provide the Union notice of and an opportunity to bargain any change in the appraisal cycle dates.

pilot beta site or any new management performance system based on the pilot beta site that seeks to create nationally standardized performance standards by classification/series.

3. New OPM pilot beta standards that have been implemented for certain administrative employees will be rescinded immediately, and replaced by the earlier standards.

The current rating cycle does not need to be changed because it permits supervisors to devote the proper amount of time to evaluating employees without being distracted by other "urgent fiscal year end activities." Under the Employer's proposed performance appraisal period, "supervisors may not have time to document 'Outstanding' and 'Highly Successful' employees," resulting in lower ratings than they deserve and the withholding of performance awards. As to the Employer's "vague and generalized" proposal regarding the OPM pilot beta site, it is "impossible" for the Union to tell exactly how it will impact unit employees or to generate "meaningful counterproposals." Therefore, "until the Union is provided specifics regarding the Agency's proposal," the Panel should not allow the program to go into effect.

CONCLUSIONS

Having carefully reviewed the parties' final offers in light of the specific issue over which the Panel asserted jurisdiction, we shall limit our decision to the question of whether the bargaining unit's performance appraisal cycle should be changed to coincide with the fiscal year. In this regard, we shall order the adoption of this portion of the Employer's final offer. The Union raises a concern regarding the effect the change may have on employees' performance ratings and awards. In our view, its concern is speculative and outweighed by the benefit that would accrue from applying consistent performance appraisal dates throughout HUD. In addition, the LMA contains numerous procedural protections, including the right of employees to grieve their performance ratings, which appear adequately to protect employees' interests.

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 § 2471.11(a) of its regulations hereby orders the following wording:

The performance appraisal period in Article 13, Section 13.04, will be changed to October 1 through September 30.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

December 22, 2006
Washington, D.C.