

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION
GODDARD SPACE FLIGHT CENTER
WALLOPS ISLAND, VIRGINIA

and

LOCAL 2755, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case Nos. 08 FSIP 21
and 08 FSIP 27

DECISION AND ORDER

Local 2755, American Federation of Government Employees, AFL-CIO (Union) and the National Aeronautics and Space Administration, Goddard Space Flight Center, Wallops Island, Virginia (Employer) 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.

After investigation of the requests for assistance the Panel consolidated the cases and determined that the dispute, concerning the implementation of a five-tier performance appraisal system, should be resolved through an informal conference with Panel Member Grace Flores-Hughes. The parties were informed that, if a complete settlement were not reached during the informal conference, Member Flores-Hughes would notify the Panel of the status of the dispute. The notification would include, among other things, the final offers of the parties and her recommendations to the Panel for resolving the issues. The parties also were informed that, after considering the entire record, the Panel would resolve the dispute by taking whatever action it deemed appropriate, which could include the issuance of a binding decision.

Pursuant to the procedural determination, Member Flores-Hughes conducted an informal conference with the parties on March 14, 2008, at Wallops Island, Virginia. During the course

of the meeting, the parties voluntarily resolved all but one issue. The Panel has now considered the entire record, including the parties' final offers and supporting statements of position on the one remaining issue, and Member Flores-Hughes' recommendation for resolving the dispute.

BACKGROUND

The Employer's primary mission is to expand knowledge of the Earth and its environment, the solar system and the universe through observations from space. The Union represents approximately 150 professional and non-professional bargaining-unit employees who work as scientists, engineers, mathematicians, and non-supervisory Wage Grade and Class Act employees. The parties' collective-bargaining agreement was to have expired in 2005 but has been rolled over for the past 3 years.

ISSUES AT IMPASSE

The parties disagree over how long to postpone a Performance Improvement Plan (PIP) meeting if an employee elects to have a Union representative present and one is not immediately available.^{1/}

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes that, "[g]enerally, performance meetings will not be postponed by more than three (3) workdays to accommodate the securing of a Union representative." This would give the Union representative adequate time to make scheduling arrangements and prepare for discussions regarding the PIP, and allow the Union to brief a replacement steward "on the particulars of the PIP" if necessary. It also protects the employee in the event management postpones and reschedules a meeting on short notice and/or schedules one at the time the assigned Union representative is not available. The Employer, on the other hand, "has not offered any specific instances where attempts to engage the Union in Labor-Management relations at a

^{1/} The purpose of a PIP is to provide a reasonable opportunity for an employee whose performance has been determined to be unacceptable in one or more critical elements to demonstrate acceptable performance in the critical elements(s) at issue.

prescribed time were nullified by the Union's unavailability to meet." Finally, it is often difficult to secure a Union representative within 1 workday due to the location of personnel, an understaffed workforce, overtime, change in shifts, mandatory training and other factors relating to work operations.

2. The Employer's Position

The Employer's counter offer is "[g]enerally, performance meetings will not be postponed by more than one (1) workday to accommodate the securing of a [U]nion representative." Its proposal provides flexibility in that the 1-workday postponement would be the established expectation but exceptions could be made where appropriate. In this regard, there is a history of Union inflexibility in scheduling meetings that could result in the 3-day postponement becoming the norm, a result that would unduly delay the PIP process. Finally, the Employer's willingness to allow the Union's presence during PIP progress review meetings "goes beyond regulatory requirements."

CONCLUSION

Having carefully considered the evidence and arguments presented by the parties, we shall order the adoption of the Employer's final offer to resolve the impasse. PIP-related meetings, among other things, are conducted to discuss with an employee what is needed to improve his or her performance. To be effective they should be non-adversarial and occur without undue delay. In our view, a postponement period of no more than 1 workday to locate a Union representative is reasonable given the purpose of such meetings. As to the Union's contention that it is often difficult to secure a Union representative within 1 workday, the Employer's proposal provides the flexibility to increase the postponement period, and we are persuaded that management will do so where warranted.

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 by 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:

The parties shall adopt the Employer's final offer.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

April 24, 2008
Washington, D.C.