

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
ST. PAUL DISTRICT
ST. PAUL, MINNESOTA

and

LOCAL 1441, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 11 FSIP 138

DECISION AND ORDER

The Department of the Army, U.S. Army Corps of Engineers, St. Paul District, St. Paul, Minnesota (Employer) and Local 1441, American Federation of Government Employees, AFL-CIO (Union), jointly 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.

After investigating the request for assistance, which arose during bargaining over a successor collective-bargaining agreement (CBA), the Panel determined that the dispute should be resolved by directing the parties to submit their final offers and written statements of position, with supporting evidence and arguments. The parties were informed that, after considering the entire record, the Panel would take whatever action it deems appropriate to resolve the dispute, which may include the issuance of a *Decision and Order*. In accordance with the Panel's instructions, the parties timely submitted their responses. The Panel has now considered the entire record.

BACKGROUND

The Employer maintains navigation channels, operates 13 lock and dam sites, performs dredging operations, and undertakes flood control on waterways in Minnesota, Wisconsin, North Dakota

and Iowa. The Union represents a bargaining unit consisting of approximately 235 Wage System and General Schedule employees. The parties' CBA expired on December 12, 2011.

ISSUES AT IMPASSE

The parties' disagreement over three provisions in Article 9, "Work Schedules and Overtime," concerns whether: (1) there should be a mandatory duty-free 30-minute lunch break for employees during the non-navigation season and winter lay-up period^{1/} and, consequently, a decrease in the duration of the rest period between shifts; and (2) an employee called in to work overtime for an absent employee should be in the same occupational series as the absent employee.^{2/}

POSITIONS OF THE PARTIES

1. Duty-Free Lunch Break and Rest Period Between Shifts

a. The Employer's Position

The Employer proposes the following:

All personnel working a day shift during the non-navigation season and when dredge is in winter lay-up, are required to include a 30-minute non-paid lunch period in their work schedule. This excludes lock staff working weekends and holidays. If workload does not allow a lunch period, then at the employee's discretion ½ hour of compensatory time or overtime will be authorized. If necessary the supervisor can require staggered lunch schedules.

1/ The non-navigation season and winter lay-up is the period when waterways are frozen and closed to vessel traffic and dredging operations cease. During this time, staffing is reduced and many lock and dam operators are placed in a furlough status due to the diminished amount of work.

2/ The Union included, in its final offer, a new issue that had neither been part of the parties' joint request for Panel assistance nor raised by either party as an issue during the Panel's background investigation of the case. Subsequently, the Union withdrew the proposal because it already had agreed to a provision that would resolve the matter.

Furthermore, it proposes that time off between shifts in a 24-hour period be reduced from 12 consecutive hours to 10 consecutive hours for those working regular schedules. Exceptions would apply for those in unique work situations, such as equipment operators and floating plant personnel, who would be provided with a minimum of 8 consecutive hours off duty for rest in a 24-hour period. Additionally, when quarters are provided for floating plant personnel immediately adjacent to or aboard the work site, rest hours may be divided into no more than two periods, one of which would be at least 6 continuous hours in length.

In support of its proposals, the Employer contends that it has a right to require that employees take a duty-free lunch break as part of its right to determine when work should be assigned. In this regard, management has determined that employees should have a 30-minute duty-free lunch during the non-navigation season and winter lay up to provide them with a true break from work that would help reduce fatigue during a very long work day, as most of the employees affected by the change work a 12-hour tour of duty. Moreover, during the non-navigation season and winter lay-up, some employees already take a duty-free work break; requiring the same for all employees would ensure that the practice is consistently followed. To accommodate the addition of a 30-minute lunch break, which for some employees would extend their tour of duty to 12½ hours, time off between shifts in a 24-hour period also would have to be changed. Reducing the time off, or rest period, between shifts from 12 to 10 hours in a 24-hour period would accommodate the new 12½-hour work schedule and eliminate the need for the Employer to pay overtime or compensatory time to employees who would have less than a 12-hour rest period between shifts when the 30-minute duty-free lunch break is imposed.

b. The Union's Position

The Union opposes the inclusion of a 30-minute duty-free lunch break during the non-navigation season and winter lay-up for those employees who currently have no such requirement. Furthermore, concerning the time off between shifts, in Section 3 it proposes that:

Regular schedules will provide for 12 hours rest time between the end of one shift and the start of the following shift except when overtime is paid. Exceptions to this operating requirement shall be the galley crew on the dredging plant or when unique work

situations occur.

The Union contends that the *status quo* concerning lunch periods should be maintained, *i.e.*, workers would continue to have a paid lunch when they work a 12-hour shift during the non-navigation and winter lay-up season. The current practice of permitting a paid lunch for employees on a 12-hour schedule also should be retained regardless of the season because lock and dam operators at the work sites do not have the same working conditions as clerks and lock masters who take a duty-free lunch. Some operators cannot leave the job site, depending on the work that they are doing, so there is no need for a duty-free lunch break. In addition, some employees have no place to go for an unpaid lunch, given the remote locations of their work sites.

Requiring 12 hours of rest time between shifts would continue a past practice since the mid-1970s and retain language that has been in the parties' CBAs since 1992. The current contract wording does not foreclose management from calling employees back to work after less than 12 hours rest; it only requires management to pay overtime. It is important to maintain a 12-hour minimum of off-duty time so workers have proper rest between shifts and enough time to spend with their families. Since work sites typically are in remote rural areas where roads are rough, it takes employees a considerable amount of time to drive home after work, so some of the so-called "rest time" is spent commuting long miles to and from work sites. Finally, galley crews on dredging plants should be exempted from the 12-hour rest time requirement between shifts because they live on-board and do not have to travel to a residence.

CONCLUSIONS

Having carefully considered the parties' proposals and positions, we conclude that the impasse should be resolved by imposing: (1) the Employer's proposal for a 30-minute duty-free lunch period for employees during the non-navigation season and winter lay-up; and (2) a modified version of the Union's proposal on rest time that reduces the minimum time between shifts to 11½ hours during the non-navigation season and winter lay-up only. The Employer's decision to exercise its management right not to assign work during a 30-minute period to provide employees with a lunch break would extend a 12-hour tour of duty to 12½ hours. Unless the time off between shifts is changed to less than 12 hours, however, the Employer would be faced with paying 30 minutes of overtime compensation to employees each day

when they work a 12½-hour schedule.^{3/} By modifying the Union's Section 3 proposal to require a minimum of 11½ hours between shifts, instead of a minimum of 12 hours, a 30-minute extension of the duty day for those on 12½-hour schedules would be accommodated without jeopardizing the ability of employees to get adequate rest between shifts. Accordingly, we shall order the adoption of compromise wording consistent with the discussion above which, in our view, balances the equities involved.

2. Section 4, Filling in for Unscheduled Leave^{4/}

a. The Employer's Position

Essentially, the Employer proposes that when an employee is absent due to unscheduled leave, a supervisor would consider the need for a replacement employee when safety factors or workload requirements are involved. Whenever possible, the employee called in to work overtime should be in the same occupational series as the absent employee. According to the Employer, its proposal would clarify the current contract provision, which provides that the called-back employee should be in the same "classification" as the absent employee. As the parties have had grievances over the meaning of "classification," a change in contract wording would make the provision less ambiguous. Furthermore, the provision would give management the flexibility to call back any employee within the same occupational series, regardless of grade level, so long as the employee is qualified to do the work. Moreover, by giving management the flexibility to call back a lower graded employee to cover for a higher

^{3/} While some reduction in the amount of rest time between shifts in a 24-hour period is justified in the circumstances presented, we are not persuaded that the Employer has demonstrated the need to reduce the current practice by 2 hours.

^{4/} Subsequent to the Union's submission of its final offer and supporting statement, the Union informed the Panel that it would agree to that aspect of the Employer's proposal concerning the title for Section 4, "Filling in for Unscheduled Leave." This means the Union agrees that Section 4 would apply to all bargaining-unit employees, and not just lock and dam personnel; that the provision would apply to all types of unscheduled leave, not just sick leave; and that supervisors, and not only lockmasters, should make the decision on calling in employees.

graded absent employee, overtime expenses would be reduced. In those situations, the Employer also would be able to use overtime assignments as training opportunities for lower graded employees.

b. The Union's Position^{5/}

The Union proposes to roll over the current contract wording (with the changes noted in footnote 3). In essence, this would require that an employee who is called back be in the same classification as the absent employee whenever possible. The Union maintains that absent employees should be replaced by employees in the same job classification, which the Union interprets as the same occupational series and grade. The proposed wording would eliminate the Employer's ability, for example, to replace an absent head lock operator, who is a Grade 9, with a lesser skilled Grade 8' lock operator. It allows higher graded employees the opportunity to earn overtime compensation, which otherwise would be diminished if the Employer has the discretion to cover the work with a lower graded employee. Maintenance of the *status quo* also would restrict the Employer's ability to select its "favored" lower graded employees to cover work and earn overtime.

CONCLUSIONS

After thorough review of the record established by the parties on this issue, we shall resolve the matter by adopting a modified version of the Union's proposal that substitutes "occupational series and grade" for "classification." In our view, changing the terminology would eliminate the ambiguity over its meaning which previously has led to grievances. Replacing an absent employee with another of the same occupational series and grade, whenever possible, also should ensure that higher graded employees are not arbitrarily denied opportunities for overtime work which might otherwise occur under the Employer's proposal.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and

^{5/} Support for the Union's position is taken from information provided by the Union during the parties' joint interview with Panel staff when the request for assistance was initially filed.

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:

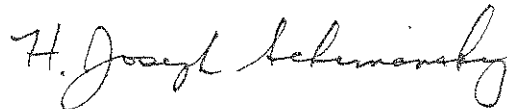
1. Duty-Free Lunch Break and Rest Periods Between Shifts

The parties shall adopt the Employer's proposal concerning a 30-minute duty-free lunch period for employees during the non-navigation season and winter lay-up; and a modified version of the Union's proposal on rest time between shifts in a 24-hour period by reducing the minimum time between shifts to 11½ hours during the non-navigation season and winter lay-up only.

2. Section 4, Filling in for Unscheduled Leave

The parties shall adopt the Union's proposal, modified to substitute "series and grade" for "classification" wherever it appears in the provision.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

February 8, 2012
Washington, D.C.