

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE NAVY  
ATLANTIC ORDNANCE COMMAND  
YORKTOWN, VIRGINIA

and

LOCAL R4-1, NATIONAL ASSOCIATION  
OF GOVERNMENT EMPLOYEES, SEIU

Case No. 06 FSIP 24

DECISION AND ORDER

The Department of the Navy (DON), Atlantic Ordnance Command, Yorktown, Virginia (Employer or AOC) and Local R4-1, National Association of Government Employees, SEIU (Union or NAGE) 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 investigation of the request for assistance, which concerns official time for the Union to represent bargaining unit employees, the Panel determined that the dispute should be resolved through an informal conference with Panel Member Mark A. Carter. The parties were informed that if no settlement was reached, Member Carter would notify the Panel of the status of the dispute, including the parties' final offers. After considering this information, the Panel would resolve the dispute by taking whatever action it deems appropriate, which could include the issuance of a binding decision.

Pursuant to this procedural determination, Member Carter convened an informal conference with the parties on May 17, 2006, at the Employer's facility in Yorktown, Virginia. The possibility of a settlement was explored, which led to modifications of the parties' proposals, but a settlement was not reached. The Panel has now considered the entire record.

## BACKGROUND

The Employer's mission is to receive, store, and issue Naval ordnance. The Union represents approximately 212 employees who work as engineers, explosive and material handlers, technicians, and in various support staff positions, at grades GS-5 through -11 and WL-5 through -9. The collective bargaining agreement (CBA) covering these employees expired on June 10, 2005; its terms and conditions will remain in effect until a negotiation over a successor agreement is completed. Official time for representation is the sole remaining issue in the parties' successor agreement negotiations (Article 5, Section 3). The expired CBA provides 40 hours of official time per week for the Union president and executive vice president; 20 hours per week for two vice presidents; 20 hours per week for the chief steward; and up to 3 hours per week for each steward (up to 20 individuals).

## ISSUE

The parties essentially disagree over the amount of official time the Union's officers and stewards should be granted to perform representational duties.

## POSITIONS OF THE PARTIES

### 1. The Employer's Position

The Employer proposes to reduce the amount of official time provided to the Union president for representational purposes to 10 hours per week, permit one other Union officer to use up to 5 hours per week, and authorize all other officers and stewards collectively to use up to 5 hours per week. Alternatively, it would provide the Union president with the discretion to distribute no more than 20 hours of official time per week among the Union officers and stewards. In addition, it also proposes the following wording:

There will be no "double time" for representatives holding dual positions (e.g., a NAGE representative serving as a Vice-President and as a steward cannot combine the official time authorized for these positions). There will be no carry over of time authorized for a NAGE representative from one pay period to another. The parties understand and agree that time spent by NAGE representatives on midterm/impact-and-implementation bargaining is

covered by and included in the official time authorized under this section. The official time authorizations under this section will be adjusted to allow for required attendance at a hearing/meeting conducted by non-Employer third party (e.g., Federal Labor Relations Authority/Federal Service Impasses Panel, Merit Systems Protection Board, an arbitrator), a major reduction-in-force, renegotiations of the Collective Bargaining Agreement, or the Ground Rules negotiations for the renegotiation of the Collective Bargaining Agreement.

The need to reduce the amount of official time used by the Union is "critical" because the AOC is under pressure from within DON to become a leaner organization. This is reflected in the steady decline in its budget since Fiscal Year (FY) 2004 from \$45 million to the \$39 million it received for FY 2006. At the same time, the number of bargaining unit employees has gone from 1,647 in FY 1990 to 220 in FY 2006, yet the contractually authorized amount of official time available to the Union has remained constant - 10,400 hours per year. While the amount of official time the Union actually used was 21.6 hours per employee in FY 2005, according to a survey conducted by the Office of Personnel Management, the Federal agency average was 4.58 hours per employee in FY 2003. The latter number compares favorably with the Employer's proposal, which would provide for 4.33 hours per employee. For these reasons, "management's proposal of 1,000 hours of official time [under either of its alternatives] is realistic in light of today's stark realities." Its additional proposed wording is necessary to clarify other issues surrounding the use of official time under its offer, including how official time the Union is entitled to receive under the Statute will be handled. Contrary to the Union's assertions: (1) the number of unfair labor practice (ULP) charges, grievances, and administrative appeals the Union has pursued in the past few years on behalf of unit employees has been minimal; (2) employees will adjust to the change in Union office hours required under its proposal; and (3) the Union has not been responsible for diffusing a substantial amount of crisis situations between employees and management. Therefore, the amount of official time the Employer proposes is adequate to meet the Union's representational needs.

## 2. The Union's Position

The Union proposes 40 hours of official time per week for the Union president, 20 hours per week for the executive vice president and the chief steward, 2 hours per week for the secretary/treasurer, and reasonable amounts of official time for the vice president and up to 10 stewards. Its proposal would reduce the amount of official time the Union currently is entitled to receive under the parties' expired CBA without adversely affecting its ability to represent unit employees. In this regard, providing less than 100-percent official time would necessitate the sporadic closure of the Union's offices, thereby frustrating unit employees' access to the Union. In addition, despite the substantial reduction in the number of employees who work at the facility since the last CBA was negotiated, there remains a large volume of ULP charges, grievances, and administrative appeals the Union prosecutes on the unit's behalf. Moreover, splitting the Union president's duty hours between facility and representational duties would be a distraction and make his fulfillment of both types of service less efficient and disruptive to management. Finally, adoption of the Employer's proposal would compromise the safety of the facility, as the Union frequently intervenes in crisis situations to defuse potentially dangerous situations involving employees and management, a concern that is exacerbated by the fact that employees work with and around ordnance.

### CONCLUSIONS

Having carefully considered the arguments and evidence presented by the parties, we are persuaded that the number of hours of official time proposed by the Employer provides the more reasonable basis for resolving their dispute. There is little evidence in the record to substantiate the Union's need for a minimum of 4,264 hours per year, the amount it would be entitled to under its proposal. The additional wording proposed by the Employer, however, shall be modified, among other areas, where it addresses official time under § 7131(a) of the Statute.<sup>1/</sup> In our view, the Employer's wording in this regard

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1/ 5 U.S.C. § 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceedings,

potentially waives the Union's statutory right to receive official time for negotiating mid-term collective bargaining agreements, including attendance at impasse proceedings. Accordingly, we shall order the parties to adopt wording consistent with the foregoing rationale.

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 parties to adopt the following wording:

The NAGE President is authorized to use up to 10 hours per week to engage in authorized representational activities. One other NAGE officer is authorized to use up to 5 hours per week to engage in authorized representational activities. All other officers and stewards are collectively authorized to use up to 5 hours per week to engage in authorized representational activities.

There will be no carry over of time authorized for an NAGE representative. The parties understand and agree that time spent by NAGE representatives on midterm/impact-and-implementation bargaining is covered by and included in the official time percentages authorized under this section unless the official time needed for such bargaining exceeds the official time amounts authorized herein. In that case, consistent with the Union's entitlement under section 7131(a) of the Statute, additional official time for negotiations will be granted as necessary. Consistent with section 7131(a) and (c) of the Statute, the official time authorizations under this section will be extended for required attendance at hearings/meetings conducted by the Federal Labor

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during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

Relations Authority/Federal Service Impasses Panel. In addition, the official time authorizations under this section will be extended for required attendance at hearings/meetings conducted by the Merit Systems Protection Board and arbitrators, a major reduction-in-force, renegotiations of the Collective Bargaining Agreement, or the ground rules negotiations for the renegotiation of the Collective Bargaining Agreement.

By direction of the Panel.

H. Joseph Schimansky  
Executive Director

July 14, 2006  
Washington, D.C.