

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE NAVY
SUPERVISOR OF SHIPBUILDING
BATH, MAINE

and

LOCAL 2906, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 11 FSIP 123

DECISION AND ORDER

Local 2906, American Federation of Government Employees, 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 the Navy, Supervisor of Shipbuilding (SUPSHIP), Bath, Maine (Employer).

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 through mediation-arbitration by telephone with Panel Member Marvin E. Johnson. The parties were informed that if a settlement were not reached during mediation, Member Johnson would issue a binding decision to resolve the dispute. Consistent with the Panel's procedural determination, on January 6, 2012, Member Johnson conducted a mediation-arbitration proceeding by telephone with representatives of the parties. During the mediation phase, the parties were unable to settle their impasse voluntarily. At the conclusion of the proceeding, Member Johnson directed the parties to submit their final offers on the remaining issues by close of business on January 13, 2012, and supporting statements of position by close of business on January 23, 2012.^{1/} On January 11, 2012, before he could issue

^{1/} The Employer provided final offers and its written

a binding decision to resolve the dispute, Member Johnson's term expired. Given this circumstance, on February 13, 2012, the Panel determined to resolve the dispute on the basis of the record in the case. The Panel has now considered the entire record, including the parties' final offers and supporting statements of position.

BACKGROUND

The Employer is one of four field activities responsible for managing contracts to construct, maintain and modernize ships and submarines for the Naval Sea Systems Command. Co-located with the commercial entities awarded these contracts, SUPSHIPS provide on-site technical, contractual and business authority for the Navy. The Union represents approximately 190 employees who work in Bath and at detachments in San Diego, California and Marinette, Wisconsin. They are employed as engineers, quality assurance specialists, production controllers, contract specialists, finance technicians, and in a variety of administrative support positions. The parties are covered by a 3-year CBA that became effective April 1, 2002, and has been rolled over annually ever since. Pursuant to Article 22, Section 2, "the present agreement will remain in full force and effect during the renegotiation of said agreement and until such time as a new agreement is approved."

ISSUES AT IMPASSE

The parties essentially disagree over whether: (1) Union officials should secure the permission of their supervisors before meeting with an employee concerning a grievance or complaint; (2) the Employer should grant official time and pay the travel and *per diem* expenses of the Union President or his designee for trips to the two detachments; and (3) the Employer should provide a lockable office at each detachment for the exclusive use of Union officials.

statement in accordance with these timeframes, while the Union submitted its final offers and written statement in the same document on January 12, 2012.

POSITIONS OF THE PARTIES

1. Article VI, Union Representation - Section 5

a. The Union's Position

The Union proposes the following:

Recognizing the mutual benefit of resolving problems at the lowest possible level, an employee who has a complaint or a grievance may discuss the matter with his first level supervisor or his designated representative and/or his steward. Furthermore, the Bargaining Unit member shall schedule meetings between the Union official and a Bargaining Unit employee. However, no such meeting shall occur until the bargaining unit member secures the permission from his or her respective supervisor. The union official will make a valid attempt to notify his or her respective supervisor verbally or in writing, e.g. the use of e-mail and/or checkout board in his absence. The union official will not leave until any mission critical work has been addressed.

Requiring Union officials to obtain the permission of their supervisors before leaving the worksite to meet with an employee to discuss a grievance or complaint inhibits the Union's ability to fulfill its representational obligations in a number of ways. First, "a supervisor is not always available to grant said permission." Thus, if an employee and his supervisor are not "in sync" with the Union representative and his supervisor, "the meeting would have to be rescheduled." The adoption of its proposal, therefore, would potentially reduce the number of times such meetings have to be rescheduled and prevent the employee and the Union from missing time limits under the parties' negotiated grievance procedure. In addition, issues such as disciplinary actions may require immediate representation, and permitting Union representatives to inform their supervisors rather than "plead" for the time to fulfill their obligations would ensure that employees are afforded their Weingarten protections. Finally, unit employees currently "are typically tasked to provide backup supervision in the absence of the respective supervisor." The Union's proposal would prevent conflicts of interest and avoid placing unit employees in the position of making "labor relations and management decisions."

b. The Employer's Position

The Employer's proposal is as follows:

Recognizing the mutual benefit of resolving problems at the lowest possible level, an employee who has a complaint or a grievance may discuss the matter with his first level supervisor or his designated representative and/or his steward. Furthermore, the Bargaining Unit member shall schedule meetings between the Union official and a Bargaining Unit employee. However, no such meeting shall occur until both the Bargaining Unit member and the Union official secure the permission of their respective first level supervisors or their designated representatives prior to attending the proposed meeting. In each case the supervisor's permission will be promptly granted unless immediate workload requirements dictate otherwise. The Employer shall identify, in writing, the designated representative(s) who, in the absence of the first level supervisor, shall be fully vested with the authority to grant such permission. If permission is denied by any of the involved supervisors, then that supervisor or his designated representative shall be responsible for establishing an alternate time at which the proposed meeting can take place.

Its proposal "addresses the Union's concern" by permitting Union representatives to seek permission to leave the worksite to discuss complaints or grievances with employees from first-level supervisors "or their designated representatives." The Union's proposal, on the other hand, would allow a Union representative to "cease[] to perform work on his own authority as opposed to having the supervisor decide the question." This is unacceptable because the work of Union representatives and their co-workers at SUPSHIP is inter-dependent and should not stop or be impaired "solely on the authority of the Union representative, rather than the supervisor, in whom such authority is vested." Moreover, based on the low number of grievances and requests for official time in the past 3 years, the "representational need" at Bath and the two detachments "is fairly minimal." The Union's proposal also suggests that every representational need is urgent and "not admitting of delay," yet "the Union can point to no instance of a failure to acquit its representational responsibilities owing to the need to obtain permission to leave the worksite." To the extent the

Union supports its proposal on the need for quick representation in disciplinary cases, pursuant to section 7114(a)(2)(B) of the Statute, an employee's Weingarten rights require an agency to reschedule any investigative discussion if a representative's work assignment precludes attendance at the meeting. Finally, the Union's proposal is inconsistent with a supervisor's responsibility to ensure the personal safety of employees. SUPSHIP Bath "is a large, complex installation" and supervisors must know the whereabouts of their employees.

CONCLUSIONS

Having carefully considered the record created by the parties on this issue, we are persuaded that the Employer's proposal provides the more reasonable basis for settling their impasse. In our view, it addresses the Union's concern by modifying the current CBA provision, allowing Union representatives the alternatives of securing the permission of their respective first level supervisors, or their designated representatives, prior to attending meetings with employees to discuss grievances or complaints. In contrast, the Union's proposal represents a significant departure from the parties' current practice. It is well established, however, that the party proposing to change the *status quo* bears the burden of demonstrating why the change is necessary. In this regard, there is no evidence in the record that requiring Union representatives to obtain the permission of their supervisors has caused such meetings to have to be rescheduled, resulted in employees or the Union missing grievance time limits, or interfered with employees' Weingarten rights. Accordingly, we shall order the parties to adopt the Employer's proposal to resolve the impasse.

2. Article VI, Union Representation - New Section 11

a. The Union's Position

The following is the Union's proposal:

The Union President or his designated labor organization representative shall be allowed at minimum semi-annual trips to detachments covered by this agreement. The purpose of these trips is to fulfill our obligation to provide proper representation to all bargaining unit members at remote sites as the organization[']s exclusive representative and to meet with management officials

at the remote sites to discuss the following: accident prevention;, absenteeism reduction, improving communications, ensuring equal employment opportunity, and maintaining employee productivity and morale. The Agency shall authorize official time and provide funding in accordance with the Joint Travel Regulations Volume 2 (JTR), Chapter 7, Part U "TRAVEL OF AN EMPLOYEE SERVING AS A LABOR ORGANIZATION REPRESENTATIVE."

Its proposal permits the Union to provide "more comprehensive coverage" to all of the bargaining unit employees it represents than the current arrangement, whereby one or two part-time stewards are the only Union presence at the two detachments. In this regard, semi-annual visits by the Local President or his representative would help to address "many issues that are intractable and beyond the ability of the local steward to resolve." The adoption of its proposed wording would also be in the Employer's interest because it would: (1) reduce the number of grievances filed by detachment employees; (2) provide the Union an opportunity to be part of the organization's communication process when upper level management travels to the detachments to hold All Hands Calls; (3) give the Union the ability to understand the command climate and work environment at each location better than it can by using the current command communication capabilities; and (4) convey an atmosphere of cooperation and partnership between the Union and the Agency that promotes the morale of the workforce. In addition, the availability of semi-annual meetings would be helpful given that the parties "are obligated to provide access to fair and unbiased representation per the provisions of the 'Weingarten Act'."

b. The Employer's Position

The Employer's counteroffer is the following:

Subject to applicable laws and regulations, Union officers shall be granted official time for occasional travel to a Detachment and/or to conduct non-grievance meetings, the subject of which is clearly of mutual benefit to both the Employer and the Union. A written request for official time shall be submitted in advance by the Union President or his designated representative to the MLPOC or his designated representative. The request shall contain information

about the duration, purpose, and nature of the travel or meeting.

The Employer's proposal would grant Union representatives official time for travel to the two detachments under specified circumstances. Its adoption is sufficient to meet the Union's demonstrated needs, particularly given the low level of representational activity at the detachments, the availability of communications technology, including video-conferencing, and the fact that the number of stewards at each detachment has been increased from one to two under the new CBA. Providing pre-approved semi-annual travel to the detachments at the Employer's expense, as the Union proposes, is inconsistent with two CBAs between unions and management at SUPSHIP Gulf Coast, which previously covered employees at the Marinette Detachment. In this regard, statements from the Presidents of the two unions confirm that, when they represented employees at that detachment, no union officials traveled to the location for the purpose of performing union representational duties, little or no official time was used by union officials to represent employees, and labor-management relations were positive. In addition, total direct travel costs under the Union's proposal are estimated at \$16,818 per year, an amount that is "prohibitive" in this "era of exceedingly tight budgets." Finally, the Employer's position is consistent with previous Panel decisions finding that telephone and video-conferencing is sufficient for a union to fulfill its representational duties and that on-site representation is not necessary.^{2/}

CONCLUSIONS

After thorough review of the record established by the parties on this issue, we shall resolve the matter by imposing the Employer's proposal. As in the first issue, the Union's approach represents a significant change in the *status quo*. Heretofore it has fulfilled its representational responsibilities through the use of local stewards at the detachments and the available communications technology. We are not persuaded, however, that the Union has demonstrated the need

^{2/} In support, the Employer cites *Department of the Interior, National Park Service, Northeast Region, Boston, Massachusetts and Local 3432, AFGE, AFL-CIO, Case No. 08 FSIP 67 (2008)* and *Department of Commerce, National Oceanic and Atmospheric Administration, Woods Hole, Massachusetts and Local 231, AFGE, AFL-CIO, Case No. 05 FSIP 53 (2005) (NOAA and Local 231, AFGE)*.

for the change it is proposing. For example, it contends that the adoption of its wording would reduce the number of grievances but the record shows that there have been a total of only four grievances at the detachments in the last 3 years. In our view, the costs of its approach far outweigh the benefits it alleges.

3. Article XXI, General Provisions - Section 11

a. The Union's Position

The Union proposes the following wording:

The Employer agrees to provide a lockable office within the main office complex in Bath and to any of the detachments with greater than fifteen (15) bargaining unit employees to be used exclusively by Union officials. The facility shall be used for matters consistent with Union needs for implementation of labor-management matters. The Agency agrees to provide a lockable office with adequate furnishings and services including, but not limited to, desks, chairs, tables, filing cabinets, telephone, telephone services, computer, intranet services and printer at the location in Bath. At each detachment with fifteen (15) bargaining unit members, the Employer shall provide a private lockable/secure space with minimum furnishings (desk, chairs, table, telephone, telephone service, and lockable filing cabinet) to hold confidential meetings and secure files.

Its proposal should be imposed by the Panel to ensure the confidentiality of representational meetings with bargaining unit employees at the detachments. Dedicated office space should be provided by management because conference rooms generally are not "available on a moment's notice" and Union representatives do not have private offices where meetings with unit employees can be held in confidence. The proposal's adoption also would allow stewards the ability to work on representational "and assigned duties without distractions, as not to jeopardize the confidentiality and rights of the members."

b. The Employer's Position

The following wording is offered by the Employer:

The Employer agrees to provide a lockable office

within the main office complex in Bath to be used exclusively by Union officials. The Employer also agrees to provide a lockable cabinet at each Detachment, the location of the cabinet to be mutually agreed to by the Employer and the Union. The Employer also agrees to provide access to an available conference room at each Detachment. If a conference room is not available when the Union needs one, the Union may request an alternative option from the MLPOC or his designated representative. All provided facilities shall be used for matters consistent with Union needs for implementation of labor-management matters.

Its proposal should be adopted because it is consistent with access to facilities and amenities provided to two other unions representing employees at SUPSHIP Gulf Coast that also currently represent employees at SUPSHIP detachments, both of which once represented employees at the Marinette Detachment. In addition, the Employer modified its previous proposal on this issue by adding that, "if a conference room is not available when the Union needs one, the Union may request an alternative option from the MLPOC or his designated representative." Management also permits Union officials to use their workstations and office equipment for conducting Union representational activities. Overall, therefore, the accommodations the Employer provides "ensure that the Union's need for confidential meetings and document storage are fully supported." Its proposal also comports with a previous Panel decision finding that no union office was needed where the employer provided the union with access to space for making private calls and convening meetings, and permitted union representatives to use their workstations and office equipment for conducting representational activities.^{3/} The Union's proposal should not be adopted because "the actual representational need is fairly minimal" and "there is simply no office space available."

CONCLUSIONS

Upon careful consideration of the parties' positions on this issue, we conclude that the impasse should be resolved on the basis of a modified version of the Employer's proposal. In our view, the Union has not established the need for lockable offices at the detachments given the relatively low level of

^{3/} The Employer cites NOAA and Local 231, AFGE to support its position.

representational activity over the past 3 years. While the Employer has attempted to address the Union's interests by permitting it to request an "alternative option" if a conference room is not available when a confidential meeting needs to be conducted, we are persuaded that confidential meeting space is more likely to be found if management is required to give priority consideration to such requests. Therefore, wording to that effect shall be added to the Employer's proposal. Finally, neither party's supporting statement provides evidence or argument concerning the issue of furnishings and services at the Union's office within the main office complex in Bath. To ensure that the matter is addressed, wording also will be added to the Employer's proposal requiring management to provide the Union office in Bath with adequate furnishings and services, including desks, chairs, tables, filing cabinets, telephone, telephone services, computer, intranet services and printer.

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:

1. Article VI, Union Representation - Section 5

The parties shall adopt the Employer's final offer.

2. Article VI, Union Representation - New Section 11

The parties shall adopt the Employer's final offer.

3. Article XXI, General Provisions - Section 11

The parties shall adopt the following wording:

The Employer agrees to provide a lockable office within the main office complex in Bath to be used exclusively by Union officials with adequate furnishings and services, including desks, chairs, tables, filing cabinets, telephone, telephone services, computer, intranet services and printer. The Employer also agrees to provide a lockable cabinet at each Detachment, the location of the cabinet to be

mutually agreed to by the Employer and the Union. The Employer also agrees to provide access to an available conference room at each Detachment. If a conference room is not available when the Union needs one, the Union may request an alternative option from the MLPOC or his designated representative. The Employer shall consider Union requests at its detachments for the use of space that provide confidentiality to be a priority. All provided facilities shall be used for matters consistent with Union needs for implementation of labor-management matters.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

March 9, 2012
Washington, D.C.