United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF VETERANS AFFAIRS VETERANS BENEFITS ADMINISTRATION PORTLAND REGIONAL OFFICE PORTLAND, OREGON and LOCAL 2157, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case No. 11 FSIP 80

DECISION AND ORDER

Local 2157, American Federation of Government Employees (AFGE), AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse, under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), between it and the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA), Portland Regional Office, Portland, Oregon (Employer).

Following an investigation of the request, which concerns a dispute over the impact and implementation of an office relocation, the Panel determined that the matter should be resolved through the issuance of an *Order to Show Cause* why the Panel should not impose the terms of an unexecuted Memorandum of Understanding (MOU) dated March 23, 2011, over which the parties previously negotiated. Under this procedure, the parties were directed to submit to the Panel, and each other, a list of the provisions in the MOU to which they object, and to provide alternate wording, if any, as well as any additional provisions each party proposes to include in the MOU. Thereafter, the parties were required to submit statements of position in support of their modified, added and/or deleted provisions.[1/]

1/ The Union, on its own initiative, submitted a rebuttal statement, on July 21, 2011, which was not authorized as

After considering this information, the Panel would take whatever action it deems appropriate, which may include the issuance of a binding decision. The Panel now has considered the entire record, except as noted above.

BACKGROUND

The Employer administers compensation benefits for veterans, and provides vocational, educational and employment counseling. The Union represents a bargaining unit consisting of approximately 200 nonprofessional General Schedule employees who primarily hold positions as Veterans Service Representative and Rating Veterans Service Representative. Employees are part of a nationwide bargaining unit of approximately 100,000 VA employees represented by AFGE. The parties are governed by the terms of a master collective-bargaining agreement (MCBA) between the VA and AFGE that went into effect on March 15, 2011. At the local level, the parties do not have a supplemental agreement. At the national level, the parties agreed that there would not be any bargaining over local supplemental agreements until the MCBA has been in effect for 6 months.

In mid-October 2010, the Regional Office moved from a Federal building, managed by the General Services Administration (GSA), to a privately-owned and managed office building across the street which includes private-sector businesses. The move was precipitated by the Federal Government's plan to demolish and reconstruct the Federal building using funds allocated by the American Reinvestment and Recovery Act. While the parties did not bargain over the floor plan for the new office, they participated in post-implementation bargaining and mediation utilizing the services of the Federal Mediation and Conciliation Service. At the conclusion of mediation, the parties reached tentative agreement on numerous issues but did not sign off on any provisions. On March 23, 2011, the Employer presented the Union with a signed MOU which, it contends, represented the resolution the parties had reached during mediation. The Union did not sign the document; instead, it requested the Panel's assistance.

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part of the Panel's procedural determination in this case. The Panel, therefore, has not considered the Union's rebuttal statement.

ISSUES AT IMPASSE

In essence, the parties disagree over wording for two additional provisions in the MOU which concern a parking space for the Union and additional lighting for certain offices.[2/]

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes to add two provisions to the MOU – that at least one parking space be provided for the Union, and that employees who have workstations with floor-to-ceiling walls that do not receive natural light be provided with full spectrum lamps or light boxes. As to Union parking, the Union contends that when GSA negotiated the lease for the new building, the Employer asked only for eight parking spaces in the garage, all of which have been assigned to managers except for the space granted to the "Employee of the Month." Had there been Union involvement, the Union would have demanded a space for the exclusive use of Union representatives. Even though the Union did not have a designated, free-of-charge space in the previous building, it has decided to pursue one in the new building since the relocation is a change in conditions of employment. Other VBA offices have reserved Union parking spaces, and the VA Medical Center, located about 20 minutes away, has authorized four Union-designated parking spaces for the Local provided free-of-charge. A Union designated parking space should be provided by the Employer at the new Regional Office location which would be used by either the Local's 2nd Vice President, who works in the Regional Office, or the Local's 1st Vice President, who is on 100-percent official time and provides representation to employees at three VA facilities, including the Portland Regional Office. Providing the Union with a parking space would elevate the Union's status and place the Local's Vice President, who works in the office, on an equitable level with the division

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2/ During the exchange of their final offers and statements of position, the parties were able to resolve three of the five issues that initially appeared to be at impasse. In this regard, the Union stated its acceptance of the Employer's proposal to add to the provisions in the MOU concerning motorcycle parking and internal security the following sentence: "The parties agree that this issue is resolved." The parties also agreed to delete from the MOU the second paragraph of a provision concerning bicycle parking storage.

chiefs in the office who are provided parking spaces.

The Union further proposes full spectrum lighting or light boxes for approximately 20 bargaining-unit employees who no longer have access to natural light in their offices. Previously, these employees had offices with windows to the outside; however, following the move, they were assigned to interior private offices that have only "rather dim" fluorescent ceiling lights. While management intends to order "task lighting" for all employee desks, this may not be sufficient to better illuminate work areas in enclosed offices. Furthermore, full spectrum lighting or light boxes would help prevent Seasonal Affective Disorder (SAD) and vitamin D deficiencies that are caused by inadequate lighting.

2. The Employer's Position

The Employer proposes to add wording to the MOU on the office relocation which states that the parties were unable to resolve the Union parking and lighting issues. It maintains that including the statement that "the parties were unable to reach agreement regarding the Union's proposal to provide a Union parking space," provides an accurate assessment of the parties' disposition of the issue following mediation. Moreover, the Employer contends that Union parking is not an appropriate subject for negotiations because the Employer did not provide the Union with a parking space in the previous location. Inasmuch as a change did not take place with respect to Union parking, the Employer asserts that it does not have a duty to bargain over the issue.[3/] As to the second issue, adding a provision that states "the parties were unable to reach agreement regarding the Union's proposal to install full spectrum lighting in certain defined areas" also provides an

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3/ It should be noted, however, that the Federal Labor Relations Authority found, in agreement with its Administrative Law Judge in SSA (Baltimore, Maryland) and Office of Hearings and Appeals, Region II (New York, New York) and Office of Hearings and Appeals, (Syracuse and Buffalo, New York), 21 FLRA 546, 547 (1986), that once it has been determined that the nature and degree of impact is more than *de minimis*, an agency has a duty to bargain over "proposals submitted in connection with and relating to" a change which concerns "working conditions, even if a particular proposal addressed a situation where no change or an improvement in pre-existing working conditions resulted . . .".

accurate assessment of the parties' bargaining over the issue and would bring it to closure. The Union has failed to demonstrate a need for either full-spectrum lamps or "light boxes" to prevent SAD or vitamin D deficiencies because there is no proof that SAD is caused by low light level or that any employees have a medical diagnosis of either condition. The Employer already has taken steps to address lighting deficiencies in the new space, having ordered "task lighting" for all employee desks shortly after the move. In the event that the Union wishes to pursue the issue it would be more appropriate to do so during negotiations over a supplemental agreement should either party choose to bargain one.

CONCLUSIONS

After carefully considering the record established by the parties in this case, we conclude that neither side has shown cause why their proposals on Union parking and lighting should be included in an MOU on the impact and implementation of the office relocation. Therefore, we shall order that the proposals be withdrawn. With respect to the Union's proposal for a parking space, because of the duty-to-bargain question the Panel suggests this subject is more appropriate for negotiations in the context of local supplemental agreement bargaining (should either party elect to bargain such an agreement) where the issue could be fully negotiated on its merits. As to the Union's proposal for full spectrum lighting or light boxes for certain employees, the record does not reflect that any employee suffers from SAD or vitamin D deficiency and, therefore, the Union's concerns appear to be speculative. Furthermore, the record reveals that the Employer has taken steps to purchase task lighting for all employees to enhance illumination in an employee's immediate work area. In our view, the parties should have the option of revisiting the lighting issue during supplemental agreement negotiations if task lighting proves to be an inadequate solution to the Union's concerns. Finally, concerning the Employer's proposals to include statements in the MOU that the parties were unable to reach agreement on the issues, we are not persuaded that such wording would add value to the MOU.

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 pursuant to 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 withdraw their proposals.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

September 14, 2011
Washington, D.C.