

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

SOCIAL SECURITY ADMINISTRATION  
OFFICE OF DISABILITY, ADJUDICATION  
AND REVIEW  
FALLS CHURCH, VIRGINIA

and

COUNCIL 215, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 07 FSIP 107

**DECISION AND ORDER**

Council 215, 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 Social Security Administration, Office of Disability, Adjudication and Review (ODAR), Falls Church, Virginia (Employer).

After investigation of the request for assistance the Panel determined that the dispute, concerning the mandatory use of Findings Integrated Templates (FIT), should be resolved through an informal conference, via telephone, 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 October 24, 2007. While the possibility of a voluntary

resolution was explored, a settlement was not reached. The Panel has now considered the entire record, including the parties' pre-conference submissions, and Member Flores-Hughes' recommendation for resolving the dispute.

### **BACKGROUND**

ODAR's mission is to adjudicate claimants' appeals of SSA decisions regarding retirement, survivors, and disability benefits under Titles II and XVI of the Social Security Act, as amended. The Union represents approximately 5,000 employees in ODAR, including 1,500 attorneys and paralegal specialists, GS-9 through GS-13. The National Agreement (NA) covering these employees is due to expire on August 15, 2009.

### **ISSUES AT IMPASSE**

The parties essentially disagree over the procedures and appropriate arrangements that should be included in their Memorandum of Understanding (MOU) regarding the mandatory implementation of FIT for decision writers in ODAR.<sup>1/</sup>

### **POSITIONS OF THE PARTIES**

#### 1. The Union's Position

Under the Union's final offer, among other things: (1) employees would be advised orally and in writing how and under what circumstances FIT would be used; (2) any concerns regarding the use of FIT would be submitted to the employee's supervisor, and a copy of the supervisor's acknowledgment and response would be placed in employee's 7B file; (3) appropriate training would be conducted in accordance with the parties' NA; (4) an employee's performance would be evaluated and assessed in accordance with Article 21 of the NA; (5) case assignments under the FIT format would be done in a fair and equitable manner, with a proportionate number of affirmations and reversals

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<sup>1/</sup> FIT is a tool to facilitate decision writing by attorneys and paralegals. These employees support Administrative Law Judges in writing disability decisions. FIT was piloted in a number of offices in 2005 and was designed as an enhancement to the then existing Document Generation System templates, which had the same basic function but were more difficult to use. After the pilot began, a number of user-friendly enhancements were made that made FIT easier to use.

assigned to each writer; (6) due consideration would be afforded to circumstances beyond the writer's control when assessing performance, including but not limited to a list of specified items<sup>2/</sup>; (7) a sufficient adjustment period would be observed after the mandatory use of FIT comes into effect, and an expectation discussion would occur thereafter; (8) FIT would not adversely impact employee participation in the Flexiplace program; (9) the parties would jointly assess whether the mandatory use of FIT has been effective 6 months after its implementation, with Union participation in the assessment constituting an assignment of work rather than being counted as official time; (10) the MOU would be subject to the provisions of 5 U.S.C. 71 and the NA; and (11) no rights of any bargaining-unit member or the Union would be waived explicitly or implicitly by signing the MOU.<sup>3/</sup>

Preliminarily, the Union recognizes the Employer's right to make FIT mandatory and is supportive of this decision. It agrees that FIT is a much more user-friendly program that has led to fewer complaints about work products since it was introduced in 2005. Turning specifically to its final offer, employees need to be provided with enough information about FIT once it becomes mandatory so they understand what is expected of them. When FIT was initially introduced in 2005, there was mandatory training on the program, even though its use was voluntary. While the vast majority of employees are using FIT, there is still a small number, approximately 2 to 3 percent, who participated in the mandatory training yet have not used FIT. Because of the many changes to FIT since it was introduced in 2005, ensuring appropriate training would provide these employees with the necessary knowledge to use the program effectively. Moreover, listing those factors that are beyond an employee's control when assessing performance is warranted as

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2/ The following are the items the Union specifies: (1) time engaged in receiving and providing training and mentoring; (2) quality and quantity of training and mentoring received; (3) an employee's lack of clarity regarding the specific use of FIT format in some cases; (4) the quality and quantity of advice, assistance, direction, instruction, oversight and consultation with peers and management officials; (5) the quality and difficulty of work assigned; and (6) the availability, support and training provided, if any, by peers and/or management officials.

3/ See Attachment A for the complete text of the Union's proposed MOU.

ODAR has moved from a pass-fail system to a three-tier appraisal system. With the mandatory implementation of FIT, there could be a decrease in productivity as employees learn to use the new system. Without the enumerated safeguards lower performance ratings could result. Finally, the Union's offer also would ensure employees that implementation of FIT would not lead to the elimination of flexiplace.

## 2. The Employer's Position

The Employer's proposed MOU includes the following provisions: (1) employees would be advised how FIT will be used and under what circumstances; (2) concerns about the use of FIT could be submitted to an employee's supervisor for consideration; (3) FIT training would be handled in accordance with Article 16 of the NA; and (4) management would assess performance in accordance with Article 21 of the NA.<sup>4/</sup> The Employer's offer provides management with discretion on how best to notify employees regarding the mandatory implementation of FIT.<sup>5/</sup> Employees would also have the ability to raise any concerns or questions regarding FIT with their supervisors. This is similar to how concerns are dealt with in other ODAR programs. In addition, most offices in ODAR currently have a designated individual who can address questions or concerns about FIT.

With respect to training, performance and flexiplace, these issues are already covered either by the NA or the 2000 Flexiplace Agreement that is still in effect. While Article 16 of the NA covers the issue of training, management recognizes the need for continuous training as a result of FIT and addresses this through such venues as train-the-trainer and interactive video/video-on-demand training. The NA also provides refresher training, upon request, or where there are identifiable problems with a particular program such as FIT. Further, Article 21 comprehensively spells out procedures regarding employee performance, including the specific

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<sup>4/</sup> See Attachment B for the complete text of the Employer's proposed MOU.

<sup>5/</sup> According to the Employer, notification will be provided to all employees through a Chief Judge's Bulletin, the standard notification procedure for these types of programs. The Bulletin would fully explain that FIT is now a mandatory program, its purpose, and how and under what circumstances it will be used.

requirement that management consider factors beyond the employee's control when assessing performance. Finally, while the Employer's final offer is silent on flexiplace, the criteria for participation in this program are stated in the parties' 2000 Flexiplace Agreement. Moreover, for employees who participate in flexiplace the FIT program has been installed on their laptop computers.

### **CONCLUSION**

Having carefully considered the evidence and arguments presented by the parties, we conclude that the Employer's final offer provides the more reasonable basis for resolving the dispute. In our view, the Union's concerns regarding the potential adverse impact of the mandatory use of FIT are speculative, particularly in view of the fact that FIT has been used voluntarily since 2005 without any documented problems. Additionally, Articles 16 (training) and 21 (performance) of the parties' NA appear to adequately address employees' legitimate interests concerning the mandatory implementation of FIT. Accordingly, we shall order the adoption of the Employer's final offer.

### **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

November 21, 2007  
Washington, D.C.

## ATTACHMENT A - UNION'S FINAL OFFER

### MEMORANDUM OF UNDERSTANDING

#### MANDATORY USE OF FINDINGS INTEGRATED TEMPLATES (FIT)

This agreement is entered into by and between the American Federation of Government Employees (SSA), Council 215 ("Union") and the Office of Disability Adjudication and Review ("Agency" or "Management"). The scope of this bargaining is the impact and implementation of the mandatory use of FIT for decision writing nationwide as of October 1, 2007. By entering into this agreement the Union does not endorse or oppose the use of FIT.

- 1) Employees will be advised in writing and orally on how FIT will be used and under which circumstances.
- 2) Any concerns submitted to the employee's supervisor regarding the use of FIT will be acknowledged and responded to, with copies placed in the individual's 7B file.
- 3) Appropriate FIT training will be conducted in accordance with SSA\AFGE National Agreement.
- 4) An employee's performance will be evaluated and assessed in accordance with Article 21 of SSA\AFGE National Agreement.

A) Assignment of cases under the mandatory use of FIT format will be done in a fair and equitable manner, with a proportionate number of affirmation and reversals being assigned to each writer.

B) Due consideration will be afforded to circumstances beyond the writers' control when assessing performance. Factors beyond the control of employees may include, but are not limited to:

- (a) Time engaged in receiving and providing training and mentoring;
- (b) Quality and quantity of training and mentoring received;
- (c) Employee's lack of clarity regarding specific use of FIT format in some cases;
- (d) Quality and quantity of advice, assistance, direction, instruction, oversight and consultation with peers and management officials;

- (e) Quality and difficulty of work assigned; and
- (f) Availability, support and training provided, if any, by peers and/or management officials.

C) A sufficient adjustment period will be observed after the mandatory use of FIT comes into effect and will necessitate an expectation discussion thereafter.

- 5) The Mandatory use of FIT will not have any adverse impact on employee participation in the Flexiplace Program. Agency laptops provided to participating employees will have the FIT templates installed.
- 6) After six months of its implementation, the parties will gather information via the use of a survey to ascertain whether the mandatory use of FIT has been effective, identify problem areas in the work processes relating to FIT and jointly attempt to resolve such problems. Union participation for this item will not give rise to official time use, but constitute assignment of work.
- 7) This agreement will be subject to the provisions of USC 71 and the National Agreement.
- 8) No rights of any bargaining unit member or the Union are being waived or compromised, explicitly or implicitly by signing this MOU.

## ATTACHMENT B - EMPLOYER'S FINAL OFFER

### MEMORANDUM OF UNDERSTANDING

#### MANDATORY USE OF FINDINGS INTEGRATED TEMPLATES (FIT)

This agreement is entered into by and between the American Federation of Government Employees (SSA), Council 215 ("Union") and the Office of Disability Adjudication and Review ("Agency" or "Management"). The scope of this bargaining is the impact and implementation of the mandatory use of FIT for decision writing nationwide as of October 1, 2007. By entering into this agreement the Union does not endorse or oppose the use of FIT.

- 1) Employees will be advised on how FIT will be used and under which circumstances.
- 2) Concerns regarding the use of FIT may be submitted to the employee's supervisor for consideration.
- 3) FIT training will be handled in accordance with Article 16 of the parties' 2005 SSA\AFGE National Agreement.
- 4) Management will assess performance in accordance with Article 21 of the parties' 2005 SSA\AFGE National Agreement.