United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF THE ARMY U.S. ARMY CORPS OF ENGINEERS NORTHWESTERN DIVISION PORTLAND, OREGON and UNITED POWER TRADES ORGANIZATION	Case No. 08 FSIP 106

DECISION AND ORDER

The Department of the Army, U.S. Army Corps of Engineers, Northwestern Division, Portland, Oregon (Employer or Agency) 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 United Power Trades Organization (Union or UPTO).

After investigation of the request for assistance, the Panel determined that the dispute, which concerns ground rules for negotiating a successor collective-bargaining agreement (CBA), should be resolved through the issuance of an *Order to Show Cause (OSC)*. In this regard, the parties were ordered to show cause, in written responses of no more than 10 double-spaced pages, why the Panel should not impose the ground rules provisions the parties agreed to in 1999, during previous successor CBA negotiations, which correspond to the issues at impasse in this case.[1/] The parties also were advised that, after

1/ Prior to submitting its response, the Union requested that the Panel rescind the *OSC* because it is inconsistent with the description of the procedure provided in the Panel's "Guide to Dispute Resolution Procedures," which states that an *OSC* will be issued "when the issues presented are substantively similar to those addressed in a previous Panel decision." As the Panel did not impose any portion of the parties' 1999 ground rules, the Union argues that

considering the entire record, the Panel would take whatever action it deemed appropriate to resolve the impasse, including the issuance of a binding decision. Pursuant to the Panel's determination, both parties submitted written responses to the *OSC*, which included their respective proposals for resolving the issues. The Panel has now considered the entire record.

BACKGROUND

The Employer operates approximately 20 hydroelectric plants in the northwestern quadrant of the United States; they are located on the Snake, Willamette, and Columbia Rivers. The Employer is also responsible for flood control and other environmental projects. The Union represents approximately 630 bargaining-unit employees who work in trades and crafts at various hydroelectric plants, and at dams and locks within the Northwestern Division. Bargaining-unit employees occupy positions such as laborer, utility worker, rigger, crane operator, welder, painter, carpenter, power plant operator, mechanic, and electrician. Unit employees' wages are set through surveys conducted by the Department of Defense Wage Fixing Authority. The parties' CBA expired in 2007, but they are following its terms until a successor agreement is effectuated.

ISSUES

The parties essentially disagree over: (1) the location of the negotiations; (2) the negotiation schedule, including work schedules of Union negotiators during negotiations; (3) official time to prepare for negotiations; (4) the payment of the Union's travel and *per diem* expenses during negotiations; and (5) the number of Union representatives on official time, including the

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under the current circumstances the Panel's procedural determination is inappropriate. Moreover, the Union contends that 10 double-spaced pages are "insufficient to present our positions and reasoning." In this regard, the Guide also states that "[the Guide] is not to be considered an official interpretation of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, or the Panel's regulations, 5 C.F.R. § 2470, *et.seq*." The Panel is within its statutory and regulatory authority to issue an *OSC* in the circumstances of this case, and 10 double-spaced pages are sufficient for the parties to create a record upon which the Panel can render a decision on the merits of the impasse. Accordingly, the Union's request is hereby denied.

payment of the Union's travel and *per diem* expenses, to attend impasse hearings.[2/]

1. Location of Negotiations

The 1999 Ground Rule

> Negotiations between the Agency and UPTO will be held in Portland, Oregon at a place agreed upon by the Parties. If there is any cost incurred for the meeting facilities such expenses shall be borne equally by the Parties.

a. Employer's Position

The Employer proposes that:

> Negotiations between the Agency and the Union will be held in Portland, Oregon at a Corps of Engineers facility agreed upon by the Parties. If there is any cost incurred for the meeting facilities such expense shall be borne equally by the Parties.

Its proposal for the location of negotiations "is the same as the 1999 ground rules," and is consistent with their past practice of conducting both term and mid-term negotiations in the Portland area. Having the negotiations at a Corps of Engineers facility gives both parties ready access to information that is necessary to conduct bargaining. Also, since the Federal Mediation and Conciliation Service (FMCS) has an office in Portland, the negotiation process would be expedited should the parties require its services.

b. The Union's Position

The Union's proposed wording is the following:

> Negotiations between the Agency and UPTO will be held in the Tri-Cities area of Washington at a place agreed upon by the Parties. If there are any costs incurred

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2/ An additional issue concerning the ratification of the CBA by the Union's membership is no longer at impasse, as the Employer agreed in its response to the *OSC* to the corresponding provision in the parties' 1999 ground rules, which is also the Union's proposal. The matter will not be addressed further herein.

for the meeting facilities such expense shall be borne equally by the Parties.

Having the negotiations in the Tri-Cities area (Pasco, Kennewick, and Richland) is more convenient for the Union bargaining team because there are no bargaining-unit employees in Portland. Conducting negotiations in Portland provides an unfair advantage to the Employer and is less cost-effective, as lodging expenses are lower in the Tri-Cities area.

CONCLUSION

After carefully considering the record established by the parties, we shall order the adoption of the 1999 ground rule to resolve the issue. Contrary to the Employer's assertion, its proposal is not the same as the 1999 ground rule because the latter does not restrict the negotiations to a Corps of Engineers facility in Portland. Nor has the Union demonstrated a need to change the parties' established practice of conducting negotiations in Portland, where FMCS mediators are available to expedite the process if the parties require their services.

2. Negotiation Schedule and Work Schedule of Union Negotiators

The 1999 Ground Rule

> Negotiations will be conducted from 0800 to 1200 and from 1300 to 1700 Monday through Thursday, one week per month until the completion of negotiations. Union negotiators will be subject to a 4/10 (10 hours/day, 4 days/week) work schedule during periods of scheduled labor negotiations. On days when negotiations are scheduled, duty hours in excess of scheduled negotiations will be available as Union preparation time and for travel to and from the negotiation site. Overtime for Union negotiators will not be authorized.

a. The Employer's Position

The Employer proposes the following wording:

> Negotiations will be conducted from 0800 to 1200 and from 1300 to 1700 Monday through Friday, one week per month until completion of negotiations. Union negotiators will be subject to a 5/8 (8 hours/day, 5 days/week) work schedule during periods of scheduled labor negotiations. On days when negotiations are

> scheduled, duty hours in excess of scheduled negotiations will be available as Union preparation time and for travel to and from the negotiation site. Overtime for Union negotiators will not be authorized.

The current CBA gives the Employer the authority to change employees' work schedules to accommodate negotiation sessions, and its offer is in compliance with appropriate laws and regulations governing travel. In addition, its proposal would provide more face-to-face bargaining that could potentially accelerate the completion of negotiations. It is also more consistent with the parties' actual practices regarding bi-lateral negotiations in that bargaining has rarely lasted 10 hours per day despite a 4/10 bargaining schedule.

b. The Union's Position

The following is proposed by the Union:

> Negotiations will be conducted from 0800 to 1200 and from 1300 to 1700 Monday through Thursday, one week per month until the completion of negotiations. UPTO negotiators will be subject to a 4/10 (10 hours/day, 4 days/week) work schedule during periods of scheduled labor negotiations. On days when negotiations are scheduled, duty hours in excess of scheduled negotiations will be available as Union preparation time and for travel to and from the negotiation site. Overtime for UPTO negotiators will not be authorized. The Union negotiators' work schedules will be changed by mutual agreement so that travel to and from the negotiation location will be on duty time.

The proposal preserves the Union's right, under 5 U.S.C. § 7131(a), to travel on duty time, a right the Employer previously recognized in mid-term ground rules. Prior bargaining sessions have been conducted on a Monday-Thursday schedule with the Union's negotiators retaining their normal 4/10 work schedules. The Employer has failed to show how this schedule has led to delays or inefficient bargaining sessions.

CONCLUSION

Having fully considered the evidence and arguments presented by the parties, we shall order the adoption of a modified version of the 1999 ground rule to resolve their dispute. Neither the 1999 ground rule nor the parties'

proposals adequately address the inter-related issues of the bargaining schedule, the Union negotiators' work schedules during bargaining, and travel to and from the negotiations site on duty time. The Panel's approach is intended to ensure that the Union's bargaining team travels to and from the site of the negotiations on duty time while maintaining the Employer's contractual right to change work schedules to accommodate the bargaining sessions. Furthermore, previous face-to-face bargaining sessions normally have not exceeded 8 hours. Therefore, the number of hours the parties would spend in bi-lateral negotiations under the wording we shall impose is consistent with their actual practice.

3. Official Time to Prepare for Negotiations

The 1999 Ground Rule

> The Union shall be entitled to utilize a bank of 140 hours of official time in order to prepare for the negotiations, prior to the commencement of the negotiations. No official time allocated under these rules shall be considered a substitute for official time already authorized under current agreements. In connection with preparation for negotiations, the Agency agrees to reimburse up to three UPTO representatives for their reasonable travel and *per diem* expenses in accordance with governing travel regulations for one [2]-day round trip to Spokane, Washington or another location mutually agreed upon."

a. The Employer's Position

The following wording is proposed by the Employer:

> The Union shall be entitled to utilize a bank of 100 hours of official time in order to prepare for the negotiations, prior to the commencement of the negotiations. No official time allocated under these ground rules shall be considered a substitute for official time already authorized under current agreements. The time used under this Ground Rules Agreement shall be accounted for on the employees' time records, in account #_____. In connection with preparation for negotiations, the Agency agrees to reimburse up to three Union representatives, who are Corps permanent employees, for their reasonable travel and *per diem* expenses in accordance with governing

> travel regulations for one [2]-day trip to Spokane, Washington or another location mutually agreed upon.

Its proposal is identical to the 1999 ground rule concerning the number of Union officials for which management would reimburse travel and *per diem* expenses for the one 2-day trip, but reduces the Union's preparation time to a bank of 100 hours. A reduction in official time is warranted because it corresponds to the Union bargaining team's work schedule, *i.e.*, the Union will have five permanent full-time employees on 4/10 schedules, and 2 10-hour days for its five negotiators equals 100 hours of official time.

b. The Union's Position

The Union's proposal is as follows:

> UPTO shall be entitled to utilize a bank of 200 hours of official time in order to prepare for the negotiations, prior to the commencement of the negotiations or the same number of hours used by management officials for the same purposes whichever amount is greater. No official time allocated under these ground rules shall be considered a substitute for official time already authorized under current agreements. In connection with preparation for negotiations, the Agency agrees to reimburse up to five (or the same number as have met for management's pre-negotiation meetings whichever is greater) UPTO representatives for their reasonable travel and *per diem* expenses in accordance with governing travel regulations for one [2]-day round trip to Spokane, Washington or another location mutually agreed upon. UPTO shall be entitled to have official time and travel and *per diem* for preparation and "reach back" meetings during the weeks when the CBA is open but the parties are not at the table in the same amounts as management. Management will notify the Union in regards to any meetings they have so the Union can schedule the same.

The portion of its proposal addressing the payment of its travel and *per diem* expenses for up to five UPTO representatives is reasonable because, during the previous successor CBA negotiations, the Union hired a professional negotiator so it only needed three members for a pre-negotiation meeting. Moreover, it is also consistent with a recent Panel decision

concerning ground rules for the parties' mid-term negotiations over drug testing which required the Employer to pay the travel and *per diem* expenses for up to four negotiators for a 1-day preparation meeting. Providing the same amount of official time as management for preparatory and/or "reach back" meetings places the parties on a level playing field by giving the Union representatives the same amount of time as the Employer's representatives spend on the entire negotiation process. It is also consistent with previous FLRA rulings and the legislative history of the Statute, which shows that Congress intended unions to receive "a more equitable allotment of official time."

CONCLUSION

We shall order the adoption of the parties' 1999 ground rule regarding official time to prepare for negotiations and the number of Union representatives who will receive reimbursement of their travel and *per diem* expenses by the Agency for the 2-day pre-negotiation meeting. Neither party has shown cause why this ground rule should not be imposed to resolve the parties' dispute. Notwithstanding the Union's assertions concerning pre-negotiation and "reach back" meetings, it has failed to demonstrate that 140 hours is insufficient to carry out its representational responsibilities or is inconsistent with the Statute. Similarly, we are not persuaded that the Employer has justified a reduction in the amount of official time provided to the Union.

4. Payment of Travel and *Per Diem* Expenses During Negotiations

The 1999 Ground Rule

> The Agency agrees to pay travel and *per diem* expenses incurred by up to four UPTO negotiators, in accordance with applicable travel regulations, for time spent in negotiations as follows: a. 100% reimbursement for the first two weeks of negotiations; b. 50% reimbursement of expenses for the third and fourth week of negotiations; c. No reimbursement of expenses for negotiations beyond the fourth week, except as provided in paragraph 20. If final agreement on the contract is not reached prior to the beginning of the fourth week, the Parties shall request the assistance of a mediator from the FMCS, or any other mutually agreed procedure, to resolve the impasse(s) then existing. The Parties agree to use their best efforts

to persuade such a mediator not to schedule or request negotiations past the fourth week.

a. The Employer's Position

The Employer proposes the following:

> The Agency agrees to pay travel and *per diem* expenses incurred by up to five Union negotiators, who are agency employees, in accordance with applicable travel regulations, for time spent in negotiations as follows: a. 100% reimbursement for the first two weeks of negotiations; b. 50% reimbursement of expenses for the third and fourth weeks of negotiations; c. No reimbursement of expenses for negotiations beyond the fourth week, except as provided in paragraph 20 [*i.e.*, last issue regarding impasse proceedings before the Panel]. If final agreement on the contract is not reached prior to the beginning of the fourth week of negotiating sessions, the Parties shall request the assistance of a mediator from the FMCS, or any other mutually agreed procedure, to resolve the impasse(s) then existing. The Parties agree to use their best efforts to persuade such a mediator not to schedule or request negotiations past the fourth week.

Its proposal is identical to the 1999 ground rule except that it would require that the Agency pay for the travel and *per diem* expenses of up to five Union negotiators. An increase from four to five is warranted given that the Union's entire bargaining team consists of unit employees during this round of negotiations. The proposal also encourages the completion of negotiations in a timely manner by providing a financial incentive to both parties to bargain effectively and efficiently. The Union's financial records establish that it can afford to contribute to the cost of its own travel and *per diem* expenses.

b. The Union's Position

The Union proposes that "the Agency agree[] to pay the travel and *per diem* expenses incurred by up to five UPTO negotiators, in accordance with applicable travel regulations, for time spent in negotiations." The successor CBA negotiations that took place under the 1999 ground rules took longer than 4 weeks. If negotiations become protracted this time, it would place a substantial financial burden on the Union, which is a

small independent organization with very limited resources and no national organization from which it can request funds. Since the Union was the moving party during the previous negotiations, it agreed to pay 50 percent of its travel and *per diem* expenses after the second week. The Employer requested to reopen the CBA this time so it is appropriate that it bear the greater financial burden.

CONCLUSION

Upon careful review of the record established by the parties, we shall order the adoption of the Employer's proposal to resolve their dispute over this issue. The Union has failed to demonstrate a need to change the essential features of the ground rule it agreed to in 1999, and the requirement that it contribute to the payment of its travel and *per diem* expenses appears to have been successful in expediting the bargaining process during the previous successor CBA negotiations.

5. Number of Union Representatives on Official Time to Attend Impasse Hearings

The 1999 Ground Rule

> The Agency agrees to grant official time for two UPTO negotiators, if otherwise in a duty status for attendance at binding arbitration hearings.

a. The Employer Position

The Employer proposes "to grant official time, [and] travel and *per diem* for two Union negotiators, if otherwise in a duty status for attendance at binding arbitration hearings on impasse or negotiability." This is consistent with what happened when the parties reached an impasse in their previous successor CBA negotiations and the Panel directed them to attend impasse proceedings in Washington, D.C. Management has never sent more than two representatives to an impasse proceeding and does not envision any situations that would require it to deviate from this practice.

b. The Union Position

The Union proposes that:

> The Agency agrees to grant official time [and] travel and *per diem* for a minimum of two UPTO negotiators, if

> otherwise in a duty status for attendance at binding arbitration hearings. If the Agency has more than two representatives in attendance the number of UPTO representatives on official time and travel and *per diem* will be equal in number to the Agency.

The adoption of its proposed wording would ensure fairness should management determine to send more than two representatives to impasse proceedings. The proposal also is consistent with section 7131(a) of the Statute, which requires the Employer to grant official time to the same number of Union representatives as it sends to impasse proceeding.

CONCLUSION

Having carefully considered the evidence and arguments presented by the parties, we shall order the adoption of the Union's proposal to resolve this issue. Imposition of the 1999 ground rule is inappropriate because it does not address the Union's travel and *per diem* expenses. In addition, there is nothing in the Employer's proposal or the 1999 ground rule that would prevent management from sending more than two representatives to attend impasse hearings if it chose to do so. Section 7131(a) of the Statute, however, entitles the Union to an equal number of representatives to attend impasse proceedings. Thus, the Union's proposal is consistent with the statutory requirement while the Employer's potentially is not.

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 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the following:

1. Location of Negotiations

The parties shall adopt the 1999 ground rule.

2. Negotiation Schedule and Work Schedule of Union Negotiators

The parties shall adopt the following wording:

Negotiations will be conducted from 1300 to 1700 on Monday; from 0800 to 1200 and from 1300 to 1700 on Tuesday through Thursday; and from 0800 to 1200 on Friday, one week per month until completion of negotiations. The period from 0800 to 1200 on Monday and 1300 to 1700 on Friday shall permit the Union's negotiators to travel to and from their homes to the negotiations site on duty time. Union negotiators will be subject to a 5/8 (8 hours/day, 5 days/week) work schedule during periods of scheduled labor negotiations. On days when negotiations are scheduled, duty hours in excess of scheduled negotiations will be available as Union preparation time and for local travel to and from the negotiation site. Overtime for Union negotiators will not be authorized.

3. Official Time to Prepare for Negotiations

The parties shall adopt the 1999 ground rule.

4. Payment of Travel and *Per Diem* Expenses During Negotiations

The parties shall adopt the Employer's proposal.

5. Number of Union Representatives on Official Time to Attend Impasse Hearings

The parties shall adopt the Union's proposal.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

December 22, 2008
Washington, D.C.