

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF HEALTH AND HUMAN
SERVICES
NATIONAL INSTITUTES OF HEALTH
NATIONAL INSTITUTE OF ENVIRONMENTAL
HEALTH SCIENCES
RESEARCH TRIANGLE PARK, NORTH CAROLINA

and

LOCAL 2923, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 09 FSIP 40

DECISION AND ORDER

Local 2923, 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 Health and Human Services, National Institutes of Health, National Institute of Environmental Health Sciences (NIEHS), Research Triangle Park, North Carolina (Employer).

After investigating the request for assistance, which involves negotiations over the relocation of approximately 5 bargaining-unit employees in the Clinical Research Unit to a new building,^{1/} the Panel determined that the dispute should be resolved on the basis of the parties' final offers and written statements of position; after considering this information, the Panel would take whatever action it deemed appropriate, which may include the issuance of a binding decision. The Panel has now considered the entire record in this case.

^{1/} The Employer implemented the move in July 2009.

BACKGROUND

The Employer's mission is to conduct, foster, and coordinate research and research training on the biological effects of chemical, physical, and biological substances in the environment to improve human health conditions. The Union represents a bargaining unit consisting of approximately 160 employees in such jobs as biologist and program analyst, and in administrative support staff positions. The parties' current collective-bargaining agreement (CBA), which was implemented in 1990, remains in full force and effect until it is replaced by a successor agreement. The parties are currently in the process of negotiating over a successor agreement.

ISSUES AT IMPASSE

The parties disagree over whether: (1) an employee who is relocated to a smaller office should be given the option to telework; and (2) bargaining-unit employees should have the opportunity to bid on and relocate to offices that become vacant at the new location.

POSITIONS OF THE PARTIES

1. Telework

a. The Union's Position

The Union proposes the following:

Whenever a bargaining-unit employee is given less than a 100 sq. ft. office, that employee will be given the option of telework status if the employee is eligible. The employee will be permitted to telework a minimum of 1 day per week. Any denials of such a telework status will be provided in detail to the union.

It argues that the proposal is an appropriate arrangement for employees adversely affected by the Employer's decision to relocate employees to smaller offices. Allowing employees to perform their duties at an alternative work site 1 or more days each week is likely to improve morale by providing them with relief from having to work in a small office. Since NIEHS already has a telework policy, the proposal merely would allow employees to benefit from it. In the event that the Employer denies an employee a telework option, the rationale for the

decision should be provided in writing to the Union to help ward off litigation. In this regard, if the Union can explain to the employees why their telework request was not granted, the employee may be less likely to file a grievance.

b. The Employer's Position

The Employer does not have a counter offer, and the Panel should order the Union to withdraw its proposal. Essentially, the Employer argues that the proposal is outside the scope of bargaining over an office relocation because it is unrelated to the office move. On the merits, it asserts that the Union's proposal is superfluous because only one employee was relocated to an office that is less than 100 sq. ft. and the employee's supervisor previously determined that the employee was needed in the office 5-days-a-week; therefore, she was not eligible for telework under NIEHS's existing telework policy.

CONCLUSIONS

Having carefully considered the parties' positions, we shall order the Union to withdraw its proposal. In our view, the proposal is unnecessary because the employee it would apply to is ineligible for telework under NIEHS's telework policy. To the extent that the Union objects to the current policy, it will have an opportunity to address the matter during the parties' successor CBA negotiations.

2. Future Office Vacancies

a. The Union's Position

The Union proposes that "(w)hen a desirable office is vacated for 6 months or more, current bargaining-unit employees in that organizational unit will immediately have an opportunity to select the office in the rank order determined by the selection criteria." According to the Union, a desirable office is one that has a window or is larger. It contends that employee morale may be improved if employees have an opportunity to improve their office environment. The proposal would not foreclose management's ability to have a non-bargaining unit employee occupy the office but merely sets a reasonable time limit for management to do so.

b. The Employer's Position

The Employer does not have a counter offer. It contends that management should have unfettered discretion to determine office occupancy. In this regard, there should be no restrictions on its ability to place a non-bargaining unit employee in a vacated office or to ensure that the employee who occupies the office holds a position that is within the functional grouping of employees in the area where the vacant office is located. Accordingly, the Panel should order the Union to withdraw its proposal.

CONCLUSIONS

After carefully considering the parties' positions on this issue, we shall order that it be resolved on the basis of the following compromise wording:

When an office becomes vacant, current bargaining-unit employees who are within the functional grouping where the vacated office is located, if any, will have an opportunity to select the office in the rank order determined by the selection criteria,^{2/} unless management elects to reserve the office for a non-bargaining unit employee.

We are not persuaded, on the basis of the information provided by the Employer, that it should have unfettered discretion to determine the occupancy of vacated office space. In our view, the better alternative is to give the Employer the opportunity to place a non-bargaining unit employee in the office and, if it chooses not to do so, to permit a qualified bargaining-unit employee to move into a more desirable office on a permanent basis. Such a resolution may boost morale by allowing a bargaining-unit member to occupy what could be prime office space. Moreover, requiring that the bargaining-unit employee who occupies the office be within the functional grouping of employees in the area of the vacated office should ensure that the compromise does not interfere with the Employer's ability to accomplish NIEHS's mission in an effective manner.

^{2/} It is our understanding that the parties already have agreed that office selection will be based on the following criteria: (1) current grade of qualified employee; (2) Federal service computation date; and (3) NIEHS service computation date (tie breaker).

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. Telework

The Union shall withdraw its proposal.

2. Future Office Vacancies

The parties shall adopt the following compromise wording:

When an office becomes vacant, current bargaining-unit employees who are within the functional grouping where the vacated office is located, if any, will have an opportunity to select the office in the rank order determined by the selection criteria, unless management elects to reserve the office for a non-bargaining unit employee.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

January 11, 2010
Washington, D.C.