

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

SOCIAL SECURITY ADMINISTRATION  
OFFICE OF DISABILITY ADJUDICATION  
AND REVIEW  
JERSEY CITY HEARING OFFICE  
JERSEY CITY, NEW JERSEY

and

ASSOCIATION OF ADMINISTRATIVE  
LAW JUDGES, IFPTE, AFL-CIO

Case No. 11 FSIP 48

DECISION AND ORDER

The Association of Administrative Law Judges, International Federation of Professional and Technical Engineers (IFPTE), AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, to consider a negotiation impasse between it and the Social Security Administration (SSA), Office of Disability Adjudication and Review, Jersey City Hearing Office, Jersey City, New Jersey (Employer or ODAR).

Following an investigation of the request for assistance, which concerns the assignment of office space to employees at the new Jersey City Hearing Office, the Panel determined that the dispute should be resolved through the submission of final offers and written statements of position, with supporting evidence and argument on the issue.<sup>1/</sup> The parties were advised

---

<sup>1/</sup> The Panel's procedural determination letter to the parties included the following footnote:

Supporting evidence may include, but is not limited to, affidavits, reports, photographs, charts, and graphs. In particular, any party  
(Cont.)

that, after considering the entire record, the Panel would take whatever action it deems appropriate to resolve their impasse, which may include the issuance of a binding decision. The parties' final offers and supporting statements were received pursuant to this procedure, and the Panel has now considered the entire record.

### BACKGROUND

The Employer administers the nationwide Disability Adjudication and Review program for SSA, providing the basic mechanisms through which individuals and organizations dissatisfied with determinations affecting their rights to and amounts of benefits, or their participation in programs under the Social Security Act, may administratively appeal these determinations in accordance with the requirements of the Administrative Procedure and Social Security Acts. ODAR includes a nationwide field organization staffed with Administrative Law Judges (ALJs) who conduct hearings and make decisions on appeals filed by claimants, their representatives, providers-of-service institutions and others under the Social Security Act. The Union represents a nationwide consolidated bargaining unit consisting of approximately 1,500 ALJs. The parties are covered by a master collective-bargaining agreement (MCBA) that was to have expired on January 31, 2010, but remains in effect until their current negotiations over a successor agreement are completed.

### ISSUE AT IMPASSE

The parties disagree over whether one of the corner window offices in the Jersey City Hearing Office should be assigned to the Hearing Office Director (HOD) or a bargaining unit ALJ.

#### 1. The Employer's Position

The Employer's position is that, in accordance with its floor plan, the HOD should be assigned to the corner window office. Its position is consistent with the requirements of the

---

claiming the existence of a past practice should be prepared to support the claim with objective evidence. [Emphasis added.]

1998 Space Allocation Standards (SAS), which the previous Panel added to the definition section of Article 29, "Facilities and Services," of the parties' MCBA,<sup>2/</sup> and Article 29, Sections 5C and E. Article 29, Section 5C, states that "selection of individual private offices by the judges assigned to the site shall be made from the offices designated on the floor plan for judges," and Article 29, Section E, states that "each judge in a hearing office shall be provided an individual private office, as described in the [Office of Hearings and Appeals] SAS dated March 1998." In light of the fact that management has complied with all of the relevant contractual requirements and that "100 [percent] of the ALJ staff has been allocated window offices, which is an added benefit that is not a [contractual] requirement," the Union's "added demand for the corner office designated to the HOD is unreasonable."

During negotiations, the Union offered a variety of arguments to support its position that allocating the corner window office to the HOD is improper because ALJs have judicial status equivalent to executive level personnel and are entitled to treatment equal to that designation. Among them, it contended that ALJs are the highest ranking officials working for the Agency; that the HOD is lower ranking in grade and "simply a member of management" who "does not have the same status as ALJs and should not be entitled to" a corner window office; and that "management is not showing ALJs the professional respect they deserve." The Union's claims are an attempt to "resurrect issues discussed during the 2001 negotiations of Article 29, IFPTE's first collective bargaining agreement" that were rejected by the previous Panel. It has not, however, "articulated or submitted any evidence to show how the office designated to the HOD is inappropriate or negatively affects the ALJ staff members." The Union "cannot do so because no negative impact exists with the current floor plan." In contrast, the Employer believes that "all employees, including the HOD have an important role in fulfilling the Agency's mission." In this regard, HODs supervise anywhere from 12 to 60 support personnel, and serve as principal management advisors to Chief ALJs in the overall management and administration of hearing offices. In summary, the Panel should recognize that the Employer has "addressed the Union's concerns and met the

---

<sup>2/</sup> Social Security Administration, Office of Hearings and Appeals, Falls Church, Virginia and AALJ, IFPTE, AFL-CIO, Case No. 02 FSIP 61 (October 24, 2002).

Union's legitimate requests" and order the adoption of the Employer's position.

## 2. The Union's Position

The Union proposes that "an AALJ bargaining unit judge [] occupy the corner window office currently designated on the January 2011 new Jersey City Hearing Office floor plan as the [HOD] office." Assigning the office to an ALJ unit employee, rather than the HOD, is commensurate with the ALJs' position as "the highest ranking government officials and the most highly compensated employees in the hearing offices." ALJs are "at the top of the ODAR pyramid" and "all work flows from the ALJs" within a hearing office. Thus, "by virtue of the prominent position ALJs occupy in the hearing office structure, ALJs should continue to enjoy the privileges associated with that prominence." In addition, "by past practice of over twenty (20) years' duration, [ALJs] have had first choice in selecting, by seniority, from among corner and window offices in the hearing office." The Employer's proposal, however, is "contrary to the longstanding, established practice within SSA and cannot be countenanced." In this regard, the U.S. Supreme Court has long held that "in deciding a 'past practice' dispute, an arbitrator's 'source of law is not confined to the express provisions of the contract, as the industrial common law the practice of the industry and the shop is equally part of the collective bargaining agreement although not expressed in it'."<sup>3/</sup> It has been "an established practice for decades" for ALJs to select corner and window offices and "there is no reason to violate this practice now." Adoption of the Employer's proposal to place the HOD in the corner office would "artificially and symbolically elevate" a management official to a position higher than that of an ALJ. The Employer's attempt to do so "is nothing short of anti-union animus," denigrates the position of the ALJ, and violates settled labor law.

### CONCLUSIONS

Having carefully considered the evidence and arguments presented by the parties in this case, we conclude that the Employer's position provides the more reasonable basis for resolving the impasse. In the matter of office selection at

---

<sup>3/</sup> *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581-81 (1960).

hearing offices, Article 29, Section 5C, of the parties' MCBA provides that "selection of individual private offices by the judges assigned to the site shall be made from the offices designated on the floor plan for judges." The Employer acted consistent with this contractual requirement in presenting the Union with a floor plan for the new Jersey City Hearing Office designating offices for the ALJs, actually going beyond contractual requirements by providing all of the ALJs in the bargaining unit with window offices. The claim that management's decision to assign the HOD a corner window office is inconsistent with a longstanding practice is unsupported by any evidence even though our procedural determination letter urged that such evidence be presented. As to the Union's remaining argument, we are not persuaded that the Employer's designations reflect anti-union animus and a diminution of the status of the ALJs. Accordingly, on the basis of the evidence presented, we shall order the parties to adopt the Employer's position.

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:

In accordance with the Employer's floor plan, the Hearing Office Director shall be assigned to the corner window office in the new Jersey City Hearing Office.

By direction of the Panel.



H. Joseph Schimansky  
Executive Director

April 21, 2011  
Washington, D.C.