

63 FLRA No. 181

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES
LOCAL 1156
(Union)

and

UNITED STATES DEPARTMENT OF THE NAVY
NAVAL SUPPORT ACTIVITY
MECHANICSBURG, PENNSYLVANIA
(Agency)

0-NG-2929

DECISION AND ORDER ON A NEGOTIABILITY
ISSUE

August 14, 2009

Before the Authority: Carol Waller Pope, Chairman and
Thomas M. Beck, Member

I. Statement of the Case

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute) and Part 2424 of the Authority's Regulations, and concerns the negotiability of one proposal.¹ The Agency filed a statement of position to which the Union did not file a response.

For the reasons that follow, we find that the proposal is outside the duty to bargain. Accordingly, we dismiss the petition for review.

II. Background

The proposal arose in the context of negotiations over the Agency's reduction in the level of janitorial services provided to areas where unit employees work. The reduction in janitorial services entails the following changes: desk-side trash is removed once per week instead of daily; floors are vacuumed twice per month instead of twice per week; dusting has been eliminated; carpets are shampooed once every 18 months instead of

twice per year; and dust mopping is performed twice monthly instead of weekly. Post Petition Conference Record at 1.

III. Proposal

One HEPA vacuum cleaner will be provided for each physical location of a three-digit code for any employee who desires to utilize it in their personal area, entirely at their own discretion.

IV. Meaning of Proposal

The parties agree that the proposal would require the Agency to provide one HEPA vacuum cleaner for each physical location of a division of the Agency for use by individual employees who choose to vacuum their work stations as a result of the reduced level of janitorial services.

V. Positions of the Parties**A. Union**

The Union made no arguments regarding the negotiability of the proposal in its petition and did not file a response to the Agency's statement of position. In its petition, the Union states only that the proposal:

would allow individual employees, if and when they desire, to reduce allergens and dirt in the area of their work stations. This option is needed due to the expected reduced level of cleanliness under the new level of services.

Petition at 7.

B. Agency

The Agency contends that the proposal is nonnegotiable because it excessively interferes with management's right to assign work under § 7106(a)(2)(B) of the Statute. Statement of Position at 4. According to the Agency, the proposal does not constitute an appropriate arrangement under § 7106(b)(3) because it addresses "purely speculative or hypothetical" adverse effects. *Id.* The Agency also argues that the proposal is nonnegotiable because it concerns the methods, means and technology of performing work, matters about which the Agency is not required, but may elect, to bargain under § 7106(b)(1). *Id.*

VI. Analysis and Conclusions

As set forth above, the Union made no arguments regarding the negotiability of the proposal in its petition and did not file a response to the Agency's statement of position. Thus, the Union does not dispute the Agency's

1. Fourteen proposals were contained in the petition for review. However, as thirteen subsequently were resolved by the parties, only one proposal remains for consideration here.

assertion the proposal affects the right to assign work under § 7106(a)(2)(B) of the Statute. Moreover, the Union does not argue in its petition for review that the proposal is within the duty to bargain as an exception to management's rights. Accordingly, consistent with Authority precedent, the proposal is outside the duty to bargain. *NATCA*, 62 FLRA 337, 340 (2008); *see also AFGC Local 1712*, 62 FLRA 15, 16 (2007) (finding union's failure to address agency's management rights arguments a concession under 5 C.F.R. § 2424.32).

In accordance with Authority precedent, set forth above, we find that the proposal is outside the duty to bargain.²

VII. Order

The petition for review is dismissed.

2. In view of this decision, it is unnecessary to address the Agency's remaining assertions.