

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

DEPARTMENT OF THE ARMY)
U.S. ARMY FINANCE AND)
ACCOUNTING CENTER)
INDIANAPOLIS, INDIANA)

and)

LOCAL 1411, AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES, AFL-CIO)

Case No. 90 FSIP 113

DECISION AND ORDER

Local 1411, 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 section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of the Army, U.S. Army Finance and Accounting Center (USAFAC), Indianapolis, Indiana (Employer).

After investigation of the request for assistance, the Panel determined that the dispute should be resolved through an informal conference by telephone between Staff Associate Joseph Schimansky and the parties. If there were no settlement, he was to notify the Panel of the status of the dispute, including the parties' final offers and his recommendations for resolving the matter. Following consideration of this information, the Panel would take whatever action it deemed appropriate to resolve the impasse.

Mr. Schimansky conducted a telephone conference call with the parties on September 25, 1990, but one of the issues at impasse was not resolved. Mr. Schimansky reported to the Panel based on the record developed by the parties, and the Panel has now considered the entire record, including his recommendations for settlement.

BACKGROUND

The mission of the Employer primarily is to administer the U.S. Army's military payroll. The bargaining unit consists of approximately 2,230 General Schedule employees in a wide

variety of administrative and technical occupations. The parties are currently negotiating a successor agreement to the one which expired in January 1989.

ISSUE AT IMPASSE

The parties' dispute arose over a proposed change in the Employer's policy concerning the arrival times of approximately 27 security guards. The issue at impasse involves stays of disciplinary actions associated with the change in policy.

1. The Union's Position

The Union proposes the following wording:

In the event of a disciplinary suspension or removal, the grievant [may] exhaust the [grievance] provisions contained in the negotiated agreement. The Employer agrees to delay the implementation of the [proposed] disciplinary action until a final decision is rendered, if necessary, by a third party.

The Union contends that the history of the Civil Service Reform Act, including the fact that the Federal Labor Relations Authority and the courts have ruled similar stay provisions negotiable, supports its position that its proposal should be adopted on its merits. Moreover, the proposal would be fair to grievants while doing no harm to the agency. Finally, it would prevent grievants from being put in the difficult position of trying to reverse the effects of an unjust action after the fact, and thus would eliminate the need for backpay or other "make whole" remedies.

2. The Employer's Position

The Employer has no counterproposal. In its view, the Union's proposal should be withdrawn because, among other things, its adoption would fragment the personnel policy within the agency, which has never had such a provision. In this regard, the parties are currently bargaining over a similar proposal in their term agreement negotiations covering all bargaining-unit employees, and this is a more appropriate setting for its resolution. Further, adoption of the proposal could result in the retention of an unwanted employee for an indeterminate period of time, and would conflict with the principle that discipline should be administered promptly to have its intended effect. Moreover, the proposal also would encourage the filing of frivolous grievances merely to delay the disciplinary action. Finally, stay provisions in the

Federal sector are rare, as demonstrated by a 1988 Office of Personnel Management survey of agreements which reported that only 12 (or 3 percent of those filed) had such provisions.

CONCLUSIONS

Having considered the evidence and arguments in this case, we shall order the Union to withdraw its proposal because the potential disadvantages of such a provision to the Employer outweigh the benefits it would provide to affected employees. In this regard, we are persuaded by the Employer's argument that stay provisions could undermine the effectiveness of discipline and have a negative effect on the efficiency of operations. Where the Employer determines that an employee must be removed from the Federal service, the Union's proposal essentially would force the Employer to retain that employee until a final decision in the matter is reached. The potential disruption to the Employer's mission in such circumstances is unacceptable. The relative rarity of such provisions in the Federal sector is another factor in this decision.

ORDER

Pursuant to the authority vested in it by section 7119 of the Federal Service Labor-Management Relations Statute and because of the failure of the parties to resolve their dispute during the course of proceedings instituted pursuant to section 2471.6(a)(2) of the Panel's regulations, the Federal Service Impasses Panel under section 2471.11(a) of its regulations hereby orders the following:

The Union shall withdraw its proposal.

By direction of the Panel.



Linda A. Lafferty
Executive Director