

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C.

and

CHAPTERS 65 AND 251, NATIONAL  
TREASURY EMPLOYEES UNION

Case No. 02 FSIP 153

DECISION AND ORDER

The Department of the Treasury, Internal Revenue Service, Washington, D.C. (Employer or IRS), 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 Chapters 65 and 251, National Treasury Employees Union (Union or NTEU).

After investigation of the request for assistance, the Panel determined that the dispute, which concerns designated outdoor smoking areas, should be resolved through an informal conference with Panel Member Grace Flores-Hughes. The parties also were advised that if no settlement was reached, Member Flores-Hughes would report to the Panel on the status of the dispute, including the parties' final offers and her recommendations for resolving the impasse. After considering this information, the Panel would take whatever action it deemed appropriate to resolve the impasse, which could include the issuance of a binding decision.

Pursuant to this procedural determination, Member Flores-Hughes conducted an informal conference with the parties on December 18, 2002, at the Employer's Headquarters office in Washington, D.C. The meeting was preceded by a tour of the current designated outdoor smoking areas for the Headquarter's building. At the close of the informal conference, the parties

remained deadlocked over whether certain smoking areas should be eliminated or modified; the parties then submitted their final offers on the matter. Member Flores-Hughes has reported to the Panel, and it now has considered the entire record.

#### BACKGROUND

The Employer's mission is to administer the tax laws of the United States. Employees affected by this dispute work at the Employer's Headquarters building,<sup>1/</sup> located at 1111 Constitution Avenue, NW, where they are represented by two Chapters of the NTEU. Chapter 251 represents approximately 550 professional and non-professional employees who work for the Office of Chief Counsel. These employees are covered by a collective-bargaining agreement (CBA) which was to have expired in 1995, but has been extended until a successor agreement is implemented.<sup>2/</sup> Chapter 65, NTEU, represents a separate bargaining unit of professional and non-professional employees at the Headquarters building; it is covered by a master CBA between the IRS and NTEU at the national level, which is scheduled to expire in July 2006.

The parties' current smoking policy consists of two documents, a Memorandum, dated July 9, 1998, and an undated agreement entitled "Smoking Agreement At 1111 Constitution Avenue." The documents specify the locations of the designated smoking areas outside the Headquarters building. The parties agree that since 1996, there have been three outdoor designated smoking areas: (1) at the main entrance on Constitution Avenue, where employees may smoke in an area from the base of the building steps to the street where receptacles are located; (2) under the 10<sup>th</sup> Street arcade archway; and (3) the covered area at the 12<sup>th</sup> Street and Pavilion entranceway which faces the Post Office Pavilion.

#### ISSUES AT IMPASSE

In essence, the parties disagree over whether: (1) the covered designated smoking area at the 10<sup>th</sup> Street Arcade

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<sup>1/</sup> The Headquarters building is the Employer's executive office building which also houses its criminal investigative staff, all of whom are non-bargaining unit employees.

<sup>2/</sup> The parties are in the process of renegotiating their CBA.

entrance should be eliminated; (2) the designated smoking area at the 12<sup>th</sup> Street and Pavilion entranceway should be moved 25 feet from the doorway; and (3) the designated smoking area at the 1111 Constitution Avenue entrance should be enlarged to permit smoking under the archway that is farthest from the entrance.

### POSITIONS OF THE PARTIES

#### 1. The Employer's Position

The Employer proposes to prohibit smoking in the covered outdoor area between the 10<sup>th</sup> Street exit and the Annex building (the 10<sup>th</sup> Street Arcade area); restrict smoking at the 12<sup>th</sup> Street and Pavilion entrance to the area that is at least 25 feet away from the doorway; and continue to prohibit smoking under the archways, near the doorway, and on the steps leading to the 1111 Constitution Avenue entrance to the Headquarters building.

The designated smoking area at the 10<sup>th</sup> Street Arcade entrance should be eliminated because part of the entranceway area is enclosed on three sides, which allows smoke to become trapped there; when the door to the building opens, smoke sweeps in and travels down the hallway. At least one guard on duty (a contract employee) has repeatedly complained about the smoke which he believes is the cause of his headache pain. Others have complained about second-hand smoke in the hallway near the door, although these complaints have not been documented. Furthermore, the 10<sup>th</sup> Street Arcade entrance is a very busy doorway which is the primary entrance for employees to bring their children to the daycare center, and it is unhealthy for children to walk through second-hand smoke. At the 12<sup>th</sup> Street and Pavilion entranceway, the designated smoking area should be moved 25 feet from the doorway to avoid second-hand smoke from coming into the building. At the Employer's facility in New Carrollton, Maryland, smoking similarly is prohibited within 25 feet of entranceways. This restriction is consistent with Executive Order (E.O.) 13058 which provides that smoking may be restricted at doorways so as not to subject others to second-hand smoke.<sup>3/</sup>

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<sup>3/</sup> Section 3 of E.O. 13058, dated August 9, 1997, provides that the "heads of agencies shall evaluate the need to restrict smoking at doorways and in courtyards under  
(continued...)

Finally, any new outdoor smoking policy agreement between the parties should reemphasize the current restrictions on smoking at the 1111 Constitution Avenue entrance because employees have not been adhering to them. In this regard, employees typically smoke under the covered archways at the top of the steps and on the steps of the building where they leave cigarette debris; they should be smoking only at the base of the building steps, where a bench and cigarette urns are located. Although undocumented, management has received complaints that employees are smoking in front of the building other than in designated areas. This entrance is the primary public entrance to the Headquarters building, which means that members of the public can see employees standing in front of the building smoking--not the best image of Federal employees.

## 2. The Union's Position

The Union proposes to reduce the covered designated smoking area at the 10<sup>th</sup> Street Arcade entrance by limiting it to the back middle area between the two doorways; smoking would continue to be allowed beyond the steps. In the event that the Employer is successful in persuading the Panel to totally eliminate smoking at the 10<sup>th</sup> Street Arcade entrance, another covered outdoor smoking area should be established for employees at the 1111 Constitution Avenue entrance. There, the Union proposes that smoking should be permitted under the archway farthest from the entrance, with a smoking receptacle to be placed under that archway; smoking would continue to be permitted beyond the steps to the area marked by the planters.

With respect to the 10<sup>th</sup> Street Arcade entrance, confining smoking to a smaller area, as it proposes, would reduce the covered designated smoking area by 84 percent, according to the Union's calculations. Furthermore, moving the designated smoking area away from the doorways may help prevent second-hand smoke, if any, from traveling inside the building when the doors open. There is no basis for completely eliminating smoking in the covered area at the 10<sup>th</sup> Street Arcade entrance, as the Employer proposes, because it has not presented evidence of any complaints from employees or managers with respect to second-

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3/ (...continued)

executive branch control in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation."

hand smoke at that entranceway. If the Employer had received complaints, it surely would have documented them. In the absence of such evidence, the better approach would be to limit the size of the designated smoking area and its proximity to the doorway. If the Employer is successful in eliminating smoking at the 10<sup>th</sup> Street Arcade location, employees should be provided with another designated smoking area that is covered. Permitting smoking under the farthest archway at the 1111 Constitution Avenue entrance would provide employees with a designated outdoor smoking area that is reasonably accessible and which provides a measure of protection from the elements. Placing a cigarette urn under the archway where employees would be permitted to smoke would eliminate smoking debris from accumulating on the ground.

### CONCLUSIONS

Having carefully reviewed the evidence and arguments presented in support of the parties' positions, we shall order the adoption of the Union's proposal with slight modification to resolve the impasse. In our view, the Employer has not demonstrated a need to completely eliminate the designated outdoor smoking area at the 10<sup>th</sup> Street Arcade entranceway. While one individual, a contractor employee at the Employer's facility, stated that he believes his headaches are attributable to second-hand smoke at the guard station near the 10<sup>th</sup> Street Arcade entrance, that claim is medically unsubstantiated and appears to be speculative. We find merit in the Union's proposal, however, that the outdoor designated smoking area be moved away from the entranceway at the 10<sup>th</sup> Street Arcade and confined to a smaller space. Moving the smoking area away from the doorway should help to prevent smoke from entering the building when the doors are opened. For this same reason, we also shall order the designated smoking area at the 12<sup>th</sup> Street and Pavilion entrance to be moved at least 25 feet from the doorway. Finally, with respect to the Employer's proposal to reemphasize the smoking restrictions at the 1111 Constitution Avenue entrance, that approach appears to be unnecessary because the parties already have an agreement in place which restricts smoking to a designed area beyond the steps which lead to that entrance. The Employer's concern that employees may be responsible for leaving cigarette debris on the steps and under the archways is a matter that is better addressed by management

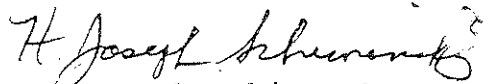
through the enforcement of the current smoking restrictions, and not by an order of the Panel.<sup>4/</sup>

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:

The parties shall adopt the Union's proposal concerning the designed smoking area at the 10<sup>th</sup> Street Arcade entrance and, with respect to the outdoor designed smoking area at the 12<sup>th</sup> Street and Pavilion entrance, adopt the Employer's proposal that smoking be prohibited within 25 feet of that doorway.

By direction of the Panel.

  
H. Joseph Schimansky  
Executive Director

January 28, 2003  
Washington, D.C.

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<sup>4/</sup> Since the Union's alternative proposal to permit smoking under one of the archways at the 1111 Constitution Avenue entrance was offered only in the event that the Panel determined to completely eliminate the designated smoking area at the 10<sup>th</sup> Street Arcade entrance, there is no need to address this matter further.