

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE NAVY
PORTSMOUTH NAVAL SHIPYARD
PORTSMOUTH, NEW HAMPSHIRE

and

LOCAL 4, INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL
EMPLOYEES, AFL-CIO

Case No. 12 FSIP 151

DECISION AND ORDER

Local 4, International Federation of Professional and Technical Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse, under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), between it and the Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire (Employer).

After investigation of the request for assistance, the Panel determined that the dispute, which arose during negotiations over employee access to the base Commissary (a grocery store), should be resolved on the basis of written submissions from the parties. The parties were advised that after receiving their submissions, the Panel would take whatever action it deemed appropriate to resolve the impasse, which may include the issuance of a binding decision.^{1/} Written

1/ Following receipt of the Union's rebuttal statement, the Employer moved to strike from the record the discussion sections of documents attached to the Union's rebuttal. The Employer alleged that the information contained therein essentially allowed the Union to provide additional argument that exceeded the 2-page limitation for the parties' rebuttal statements. Having carefully considering

submissions were made pursuant to the Panel's direction, and the Panel has now considered the entire record.

BACKGROUND

The Employer's mission is to construct and refurbish nuclear submarines and refuel them in preparation for deployment. The Union represents a bargaining unit consisting of approximately 1,500 employees, in grades ranging from GS-5 through -12, who hold positions such as engineer, chemist, technical writer, quality assurance specialist, safety specialist and engineering technician.^{2/} The parties are governed by a collective bargaining agreement that is in effect until August 2014.

ISSUE AT IMPASSE

The parties disagree over whether bargaining unit employees should be afforded shopping privileges at the base Commissary.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes that employees be granted unrestricted shopping privileges at the base Commissary because other employees, also represented by the Union but in a separate bargaining unit, are permitted to make purchases there. Denying employees in the larger bargaining unit the same privilege is unfair and inequitable. Having access to the centrally-located Commissary also would permit employees to buy fresh food to consume during lunchtime. Such opportunities recently have diminished with the closing of a large base-operated dining hall, restrictions on food truck service, and the closure of another restaurant on base. Furthermore, because employees are

the Employer's objections, its motion to strike is hereby denied. In this regard, the Panel has given the Union's submissions the appropriate weight accorded to unsworn statements.

2/ The Union also represents a separate bargaining unit which consists of approximately 17 employees who work at the Commissary and, by virtue of their employment, are afforded limited shopping privileges.

limited to a 30-minute lunch period, they do not have sufficient time to travel from their offices to their cars, drive off base, purchase food, return to the base, park their cars and consume their lunch within that time frame. Commissary access would allow them to make purchases for lunch and return to their offices to eat within the designated time. Most employees have worksites equipped with refrigerators, microwaves and toaster ovens so they would be able to prepare food purchased at the Commissary. It is unrealistic for employees to leave the base at lunchtime to purchase food due to limited egress through the one security gate that is open during the day. The base is located on an island in a river and, during the workday, only one of the two security gates to the base is open to traffic. Sporadic gate closures due to construction and maintenance contribute to the bottleneck of traffic attempting to leave and enter the base which impedes the ability of employees to quickly leave the base and return within a short time. Moreover, if employees had access to the Commissary they could shop for groceries before and after their shifts, at a venue close to their job sites. Shopping at the Commissary during non-duty hours would allow employees to avoid peak traffic at the gates, thereby reducing pollution and fuel consumption, because they would not be waiting in lines of traffic to exit the base and could use their time more productively.

In addition, increasing the number of customers who shop at the Commissary would boost business and make the store more profitable. A higher volume of business equates to greater turnover of fresh produce, less waste of fresh produce, and a more vibrant and productive facility. Evidence suggests that, currently, the Commissary is not crowded with customers waiting in checkout lines; therefore, the Commissary could absorb an increase in its customer base without adding checkout lines and hiring more employees to work them. The Navy permits persons not employed by the Department of Defense to have access to Commissaries and there is no justifiable reason for denying access to bargaining-unit employees. Specifically, Department of Commerce employees employed by the National Oceanic and Atmospheric Administration who work on submarines docked at the base are permitted to shop at the Commissary. Bargaining-unit employees, who also support the military operation, should be permitted access as well. Allowing employees to have the monetary benefit of being able to shop at the Commissary would help offset the lack of a pay raise over the past 2 years. In this regard, food prices at the Commissary, typically, are 30-

percent lower than those in retail grocery stores. Granting Commissary access to employees also would be a recruitment and retention tool which the Employer could offer to promote employment at the Shipyard. Finally, contrary to the Employer's claim that Commissary shopping privileges are intended primarily as a benefit for military personnel to supplement their generally lower pay, the Union notes that military officers and retirees, whose pay is often higher than Federal civilian employees, are permitted to shop at the Commissary. Therefore, no justification exists for denying employee access to the Commissary based on alleged higher salaries of bargaining-unit employees.

2. The Employer's Position

The Employer proposes to forward the Union's request for employee access to the base Commissary to the Secretary of the Navy and/or the Principal Deputy Undersecretary of Defense for Personnel and Readiness, in accordance with Department of Defense (DoD) Instruction 1330.17, Armed Services Commissary Instruction, dated October 8, 2008; the parties would be bound by the decision of the higher authorities.^{3/} According to the Employer, management at the Shipyard level does not have the discretion under the DoD Instruction to grant bargaining-unit employees access to the Commissary. In this connection, the DoD Instruction provides a list of those who may be granted Commissary access, and DoD civilian personnel residing in the U.S. are not among them.^{4/} Special permission would be needed at the Secretary or Undersecretary level and the Employer is willing to submit the Union's proposal for a determination by higher-level decision makers authorized to implement the Union's request. There is precedent for such a resolution. In another dispute, where management lacked the discretion to implement a Union proposal, the matter was settled when the parties agreed that the Employer would forward a Union request to higher authority for determination. Deviations from excluding Federal

3/ While the Employer would agree to forward to the appropriate decision makers the Union's request for Commissary access, it has stated that it would be "unable to endorse" such a request.

4/ Employees who work at the Commissary are permitted, on a limited basis, to make purchases at the Commissary because the Instruction specifically authorizes such access.

civilian employees from access to Commissaries typically have been limited to those who reside on an installation in the U.S. when it is impractical for them to procure supplies from other sources and the authorization of Commissary access would not impair the efficient operations of the installation. The Union's proposal, however, does not fall within any exception.

There are also economic reasons why most Federal civilian employees are not granted permission to shop at base Commissaries. Congress intended that Commissaries would be a benefit for military personnel who are typically compensated at lower levels than Federal civilian employees. Unlike Exchange services,^{5/} Commissaries are "subsidized" by Congressionally-appropriated funds which allows DoD to offer lower prices to customers. It is not in the interest of Commissary operations to increase the customer base because doing so would require additional funding from appropriated sources for commodities and infrastructure. Products are sold at cost, plus a small surcharge percentage, to cover overhead. Adding over 1,500 employees to the Commissary's customer base would require a significant increase in appropriated funding for base operations at a time when budgets for DoD entities are likely to be reduced substantially.

As to the Union's contention that bargaining unit employees do not have sufficient access to food, employees already have "innumerable" options to have food delivered to their offices at lunchtime or walk to nearby eateries. In any event, the Commissary generally sells groceries, not ready-to-eat lunch food. There are many alternatives for employees to shop for groceries at "big-box stores" close to the base whose hours are not as limited as the Commissary's and where no sales tax on food, groceries or personal/health items is levied by the state of New Hampshire.

^{5/} Base Exchanges are more akin to commercial stores such as Kmart, Target or Wal-Mart. Exchanges are non-appropriated fund instrumentalities that must remain profitable in order to continue operations. Thus, a broader customer base for an Exchange would contribute to profitability as the commodities sold are not heavily subsidized.

CONCLUSIONS

After carefully reviewing the arguments and evidence presented, we are not persuaded that either party's proposal provides a reasonable basis for resolving the impasse. In our view, a decision to adopt the Employer's proposal essentially would be a meaningless gesture because the Employer does not intend to support employee access to the Commissary. The Union, on the other hand, has not demonstrated a need to change the *status quo* given that the record reflects that adequate opportunities currently exist for employees to purchase food on base for lunch or to have food delivered to their worksites. Furthermore, the Union's interest in this matter appears to have less to do with the purchasing of fresh food at lunchtime than to be a vehicle for allowing employees to buy groceries that cost less. In this regard, the record also reflects that there are large commercial grocery stores within reasonable proximity to the base where employees can shop. Thus, we see no need to permit employees to have access to the Commissary when there are sufficient food-shopping alternatives at existing stores. Furthermore, commissaries are supported by appropriated funds that subsidize food prices for the primary benefit of members of the military, which means that adopting the Union's proposal would involve higher costs. Finally, while the Union claims that an inequity exists because employees who work at the Commissary in another bargaining unit it represents are allowed to shop there, the record reveals that this was authorized not through negotiations with the Union but, rather, under an exception in the DoD Instruction that permits employees who work at commissaries to have limited shopping privileges.^{6/} Accordingly, we shall order the parties to withdraw their proposals.

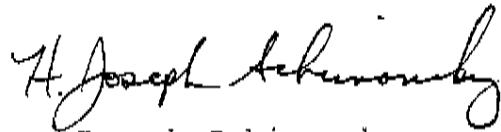
^{6/} DoD Instruction 1330.17, October 8, 2008, Enclosure 4, Section 2, Commissary Access, paragraph k, states:

DeCA Employee Commissary Privileges. DeCA Personnel assigned to commissary stores within the United States may purchase commissary products, excluding tobacco products, from the commissary store where they are assigned, for personal consumption during meals and other authorized breaks within their scheduled working hours.

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 5 C.F.R. § 2471.6(a)(2) of the Panel's regulations, the Federal Service Impasse Panel under 5 C.F.R. § 2471.11(a) of its regulations hereby orders the parties to withdraw their proposals.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

January 11, 2013
Washington, D.C.