

In the Matter of

DEPARTMENT OF THE NAVY
NAVAL AIR SYSTEMS COMMAND
FLEET READINESS CENTER
SOUTHEAST
JACKSONVILLE, FLORIDA

and

LOCAL 1943, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES,
AFL-CIO

Case No. 13 FSIP 67

ARBITRATOR'S OPINION AND DECISION

Local 1943, 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 the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, between it and the Department of the Navy, Naval Air Systems Command (NAVAIR), Fleet Readiness Center Southeast, Jacksonville, Florida (FRCSE or Employer).

After an investigation of the request for assistance, which arises from negotiations over the impact and implementation of the Employer's decision to furlough employees by the end of Fiscal Year (FY) 2013,^{1/} the Panel directed the parties to mediation-arbitration with the undersigned, Panel Member Edward F. Hartfield. Accordingly, on June 18, 2013, a mediation-arbitration proceeding was convened by telephone with representatives of the parties. The parties narrowed the dispute during the mediation phase of the proceeding but were unable to reach an agreement. The record was closed following final submissions of the parties, but while the decision was being drafted, a new development occurred. Because of the Secretary of Defense's decision on August 6, 2013, to reduce the number of furlough days to no more than 6 by the end of FY 2013, I convened a teleconference with the parties' representatives on August 14 to determine the impact of the reduction in the number of furlough days on the parties' impasse. The parties confirmed that, with the exception of one issue, all of the other issues that remained in dispute at the conclusion of the June 18 mediation-arbitration proceeding were now

^{1/} The Department of Defense (DoD) initially announced DoD-wide furloughs of 22 days. In April, that was reduced to 14 days and, on May 15, further reduced to 11 furlough days per employee. Furlough letters were issued to individual employees no earlier than May 28, and the furloughs began the week of July 8, 2013. Subsequently, on August 6, 2013, while a decision in this case was pending, the Secretary of Defense reduced the number of furlough days to 6.

moot. Additional mediation was attempted during the August 14 teleconference but the remaining issue was not resolved. Consequently, I am required to impose terms on the parties to settle the matter. In reaching my decision, I have considered the entire record.

BACKGROUND

The Employer is the largest tenant command at the Naval Air Station, Jacksonville, Florida, with several offsite locations, including Cecil Field. Its mission is to maintain capability for, and perform a complete range of depot-level rework operations on, designated weapon systems, accessories and equipment; to manufacture parts and assemblies as required; to provide engineering services in the development of changes of hardware design; to furnish technical and other professional services on aircraft maintenance and logistics problems; to perform, upon specific request or assignment, other levels of aircraft maintenance for eligible activities, and to perform all other functions and tasks as may be assigned by higher authority. The Union represents approximately 350 engineers, scientists and accountants, mainly GS-12 and -13. The parties' collective bargaining agreement (CBA) is due to expire in October 2014.^{2/}

ISSUE AT IMPASSE

The parties essentially disagree over whether supervisors should be required to grant bargaining unit employee requests to extend the use-or-lose annual leave period beyond the end of the current leave year.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes the following wording:

The employee will request the use of excess annual leave by the 3rd biweekly pay period before the end of the leave year, or request that all or some of such leave be restored. If an employee requests that all or some of such leave be restored, the supervisor will grant the request. The employee must schedule and use restored annual leave not later than the end of the leave year ending 2 years after the leave is restored.

2/ The parties' CBA states that:

If after good faith negotiations, the Union and the Employer cannot reach mutual agreement, the Employer may implement not less than its final offer providing the Union is given notice of at least five workdays. The Union may choose to process the matter as an impasse utilizing the procedures set forth in the Statute. It is understood that the resolution of the impasse may result in modification of the Employer's implementation.

Its proposal is similar to the decision of the Department of the Air Force on 21 March 2013, to grant a blanket waiver of the requirement that employees schedule use-or-lose annual leave prior to the start of the third biweekly pay period before the end of the leave year. In this regard, "employees who requested and got restoration of their excess leave had [2] years to use their restored leave starting from the end of the furlough on 21 September 2013." Consistent with the rationale provided by the Air Force for its decision, the furlough is an exigency that has disrupted employees' ability to schedule and use annual leave during the furlough period. For this reason, employees should be permitted to use annual leave that they otherwise would lose under Government-wide and Navy regulations, provided they do so before the end of the leave year ending 2 years after a supervisor grants an employee's request to have his or her excess annual leave restored.

2. The Employer's Position

The following wording is proposed by the Employer:

Management will restore the leave of any bargaining unit employee (BUE) who schedules use-or-lose annual leave by the third bi-weekly pay period before the end of the leave year and this leave is cancelled or denied due to workload priorities.

Time Limit for Using Restored Annual Leave

An employee must schedule and use restored annual leave not later than the end of the leave year ending 2 years after the date fixed by the head of the agency or designee as the date of termination of the exigency of the public business.

Restored annual leave that is not used within the established time limits is forfeited with no further right to restoration. Administrative error may not serve as the basis to extend the time limit within which to use restored annual leave. This is so even if the agency fails to establish a separate leave account, fix the date for the expiration of the time limit, or properly advise the employee regarding the rules for using restored annual leave, absent agency regulations requiring otherwise.

The Agency's proposal represents a fair adjustment for employees adversely affected by DoD's decision to conduct furloughs because it goes beyond the requirements of Government-wide regulations concerning the restoration of annual leave, found at 5 C.F.R. § 630.305-311. The regulations provide only that agencies *may* restore annual leave that was forfeited because it was in excess of the maximum leave ceilings, whereas its proposal guarantees that management *will* restore the leave of any bargaining unit employee who schedules use-or-lose annual leave by the third bi-weekly pay period before the end of the leave year and the leave is cancelled or denied due to workload priorities. While it is true that the Air Force decided to grant a blanket waiver of the regulatory requirement that employees schedule use-or-lose annual leave prior to the start of the third biweekly pay period before the end of the leave year, the Department of the Navy has not taken that step, and the Employer is unwilling to agree to the Union's proposal without the concurrence of higher level authority.

CONCLUSIONS

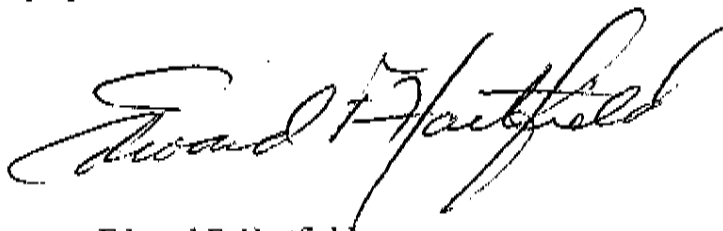
Having carefully considered the evidence and arguments presented by the parties in support of their last best offers, I am constrained to order the adoption of the Employer's proposal to resolve the impasse. Under 5 C.F.R. § 630.305, annual leave can only be restored legally if "the head of the agency or someone designated to act for him or her on the matter" determines that "an exigency is of such major importance . . . that [] annual leave may not be used by employees to avoid forfeiture." That is what the Air Force's March 21 Memorandum did – the designated head of the Air Force, the Assistant DCS, Manpower, Personnel and Services, found that "this furlough is an exigency of such major importance that annual leave cannot be used. Employees who may be furloughed may not be able to take leave due to high workload demands when at work or due to circumstances beyond their control."

The Union's proposal, however, would require *supervisors* to grant employee requests to restore annual leave that otherwise would be forfeited without the necessary determination by the head of the Navy, or someone designated to act for him or her on the matter, that the furlough is an exigency of such major importance that annual leave may not be used by employees to avoid forfeiture.

For this reason, it appears to be inconsistent with the applicable Government-wide regulations and, in my view, a decision to impose the Union's proposal is likely to result in unnecessary litigation that ultimately would be of no benefit to bargaining unit employees adversely affected by DoD's decision to implement the furlough. While I applaud the Air Force for its decision to provide employees a blanket waiver of the regulatory requirements at issue, and question the Navy's unwillingness to do so given the identical circumstances, adoption of the Employer's proposal at least would guarantee that any bargaining unit employee who schedules use-or-lose annual leave by the third bi-weekly pay period before the end of the leave year, and has such leave cancelled or denied due to workload priorities, will have the leave restored. Accordingly, I shall order its adoption.

DECISION

The parties shall adopt the Employer's proposal.



Edward F. Hartfield
Arbitrator

August 28, 2013
St. Clair Shores, Michigan