

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

U.S. DEPARTMENT OF THE ARMY, ARMY
CADET COMMAND

And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2302, AFL-CIO

Case No. 20 FSIP 052

DECISION AND ORDER

This case, filed by the U.S. Department of the Army, Army Cadet Command, in Fort Knox, Kentucky (Agency) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, concerns one article in dispute in the parties' new collective bargaining agreement (CBA) over Agency facilities. The mission of the Agency is to partner with universities to recruit, educate, and train officers for the Army. The American Federation of Government Employees, Local 2302, AFL-CIO (Union) represents 178 non-professional employees at the Agency, which include administrative positions such as Supply Technicians, Recruiting Operations Specialists, and Human Resources Assistants that assist in the recruitment, education, and training of the Army cadets. In December 2017, the Union was certified as the bargaining unit employees' exclusive representative.

BARGAINING AND PROCEDURAL HISTORY

The parties began negotiations for a new CBA on May 30, 2018. The parties negotiated on the following dates: June 6, 19, 20, and 27, 2018; July 17 and 25, 2018; August 8, 15, 21, 22, 29, 2018; September 18 and 19, 2018; October 24, 2018; November 14 and 27, 2018; December 11, 18, and 19, 2018; January 19 and 23, 2019; February 13, 20, and 27, 2019; March 13 and 27, 2019; April 3, 10, and 16, 2019; September 17, 2019; and October 17 and 22, 2019. Thereafter, the parties engaged in mediation with the assistance of the Federal Mediation and Conciliation Service (FMCS) Mediator, Chris Alford on the following dates: January 15 and 28, 2019; May 8, 2019; and October 4, 2019. During the negotiations and mediation sessions, the parties reached agreement on 37 of 38 articles in their new CBA. The parties, however, could not reach agreement over Article 8, Use of Official Government Resources. Therefore, Mediator Alford released the parties from mediation on October 4, 2019.

On November 1, 2019, the Agency filed a request for assistance in Case No. 20 FSIP 010. On December 9, 2019, the Agency withdrew its request for assistance in order to return to

mediation with the Union. On March 3, 2020, the parties engaged in mediation with the assistance of Mediator Alford to address Article 8. However, the parties were unable to reach an agreement. As a result, Mediator Alford released the parties from mediation on March 5, 2020. On May 21, 2020, the Agency filed its second request for Panel assistance over Article 8.

On July 21, 2020, the Panel asserted jurisdiction over Article 8 and directed the parties to a Written Submissions procedure. The parties timely provided those documents.¹

PARTIES' PROPOSALS AND ARGUMENTS

1. Agency's Proposals and Position

The Agency proposes in section 8-1 to require the Union to reimburse the Agency for use of its property, specifically the bulletin boards for the Union to post material on for its bargaining unit at the facility. The Agency proposes that the Union will reimburse it for 25 percent of the initial cost that the Agency incurred to purchase the bulletin boards. The Agency asserts that its proposal is consistent with Executive Order (EO) 13837 Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use and is more reasonable than the Union's proposal.

During the negotiations, the Agency asserts it tentatively agreed to allow the Union to use bulletin boards and had purchased more bulletin boards based on the Union's request. However, the Agency states that despite it purchasing these additional bulletin boards, the Union has not utilized that space for more than a year.² The Agency contends that the Union's request has resulted in the Agency unnecessarily expending its resources to accommodate the Union at the expense of the taxpayer.

In sections 8-2 and 8-3, the Agency proposes to limit access to its telephone, email, and computers for official government use consistent with EO 13837, section 4(a)(iii).³ The Agency acknowledges that the Union has a right under the Statute to solicit Union membership, therefore, it proposes in section 8-4 to allow the Union up to 12 days a year to hold membership drives at the facility. In its proposal, the Agency has designated locations where the Union can hold its membership drives at no cost to the Union, where there will not be any disruption to Agency operations, and in locations that are in close proximity to more than half of the bargaining unit employees: outside of Cadet Command facilities or inside those facilities identified for general purpose use such as Hill Hall; Palma Hall; Abrams Auditorium, and Olive Theater.

The Agency asserts that the Union's proposal permits it to utilize Agency resources at no cost, such as the Agency's bulletin boards; telephones; computer and email; and permits it to

¹ The Union did not submit a rebuttal statement.

² Agency Ex. 5.

³ Section 4(a)(iii) states, "[n]o employee, when acting on behalf of a Federal labor organization, may be permitted the free or discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems."

access and use Agency space. The Agency further contends that the Union does not propose a limit to the number of membership drives conducted each year, which the Agency asserts could cause a significant disruption to the Agency's operation. Conversely, the Agency states that its proposal provides the employees and the Union the ability to meet during non-duty time and in locations that are not disruptive to Agency operations 12 times a year.

II. Union's Proposals and Position

The Union proposes in section 8-1 to allow it to utilize bulletin boards at no cost. The Union proposes in section 8-2 and section 8-3 to allow access to Agency telephones and government email systems for representational responsibilities. Finally, the Union proposes under section 8-4 to be afforded non-duty space in all locations of Cadet Command facilities to meet with bargaining unit employees and conduct membership solicitation during lunch periods. The Union states that this space may include any spaces open to the public such as conference rooms, break rooms, and other appropriate non-duty spaces and outside areas.

The Union states that it has a right under the section 7102 of the Statute to access the bargaining unit in non-work locations while the employees are on a break. The Union contends that the Federal Labor Relations Authority (Authority) has concluded that "management's conduct in maintaining a rule prohibiting employees from soliciting membership during their breaks and disciplining an employee for violating such rule, violated the Statute."⁴ The Union asserts these decisions by the Authority affirm the Union's right to access Agency buildings to solicit membership and discuss issues with employees while the employees are in a non-duty status. Therefore, the Union argues that the President's 2018 EOs on collective bargaining and labor relations should not trump the Union's statutory rights.

The Union states that the proposed locations by the Agency to conduct these membership meetings are not adequate. The Union contends that Palma Hall is not close to the Cadet Command Building where most of the employees work. In this respect, the Union states most employees receive a 30-minute lunch break, which would not permit the employees an enough time to travel to Palma Hall and return to work before the end of their break. Finally, on the issue of providing bulletin board space for Union literature and information to the bargaining unit, the Union contends that because the Agency permits the posting of other information on its bulletin board, such as personal literature from employees, the Union also has a right to post information on the bulletin boards.

III. Conclusion

The Panel will adopt the Agency's proposal with modification. The parties disagree over the Union's access to Agency space. Specifically, whether the Union will be charged for its use of Agency bulletin boards; whether it can use the Agency's telephone, email, and computer system; and the access it has to Agency space to conduct membership solicitation.

The Agency's proposal is largely premised upon EO 13837. Section 4(a)(iii) states, "[n]o employee, when acting on behalf of a Federal labor organization, may be permitted the free or

⁴ *Social Security Administration*, 13 FLRA 409 (1983).

discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems.” However, the Panel has now consistently written that the President’s May 2018 EOs on federal-sector collective bargaining and labor relations, while important public policy guidance, are to be read *in pari materia* with the facts established in the record supporting or opposing a proposal. Here the Agency demonstrated that the requested resources were not offered to other non-governmental entities, but it also demonstrated that the requested resources have *value* and that the value would be sacrificed if it was compelled to continue to offer these resources at no charge. As discussed *supra.*, one such resource, the use of bulletin boards, was not even being utilized by the union directly causing unnecessary cost to the taxpayer. Based upon these facts the Panel is persuaded by the Agency’s argument and evidence.

The Union argues that it must have access to the Agency’s email, telephones, and computer systems, but does not provide support for its proposals. The Union similarly states that it should have free access to the Agency’s bulletin boards, yet despite the Agency purchasing additional bulletin boards to accommodate the Union’s request during bargaining, the Union has not utilized the space.⁵ The Union contends that the Agency has permitted other non-Union literate on its bulletin boards; however, the Union has not provided any evidence to support this assertion.

Finally, the Agency proposes to permit the Union access to conduct 12 membership drives a year outside of the Cadet Command facilities or inside those facilities at Hill Hall; Palma Hall; Abrams Auditorium; and Olive Theater. The Union argues that under the Statute, it may conduct membership solicitation; however, the Agency’s proposal permits the Union to access and hold these membership drives 12 times a year. The Union has not explained why it needs more days to conduct these meetings. Further, the Agency’s proposal permits the Union to access the above-referenced locations at no cost to the Union to ensure that the Union is able solicit Union membership. The locations identified by the Agency will ensure that the Union is able to freely conduct these membership drives while there is no disruption to the Agency from accomplishing its mission. As such, the Panel will order the following language for the Union’s use of the Agency facilities to conduct membership solicitation:

“Upon request and subject to normal security limitations, the Union may utilize, at no charge, a Cadet Command facility identified for general purpose use (Hill Hall, Palma Hall and Olive Theater) up to twelve (12) times per year for membership drives. Membership drives will be conducted between 1100 – 1300 which allows for setup and tear down and cleaning time. The BUE’s non-duty lunch period spans from 1130 to 1300. The Agency will be given thirty (30) calendar days advance notice (confirmation back to the Union no later than fifteen (15) days from receipt) of an upcoming membership drive and a request for a meeting place. Meeting places may occur outside of Cadet Command facilities, or inside those facilities identified above.

ORDER

⁵ Agency Ex. 5.

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated above.



Mark A. Carter
FSIP Chairman

October 1, 2020
Washington, D.C.