

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
SACRAMENTO, CALIFORNIA

and

LOCAL 2152, NATIONAL FEDERATION OF
FEDERAL EMPLOYEES, FEDERAL
DISTRICT 1, IAMAW, AFL-CIO

Case No. 08 FSIP 20

DECISION AND ORDER

The Department of the Interior, Bureau of Land Management, Sacramento, California (Employer or BLM) 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 Local 2152, National Federation of Federal Employees, Federal District 1, IAMAW, AFL-CIO (Union).

Following an investigation of the request for assistance, the Panel determined that the dispute, which arose during the parties' negotiations over their successor Master Labor Agreement (MLA), should be resolved through an informal conference with Panel Member Barbara Bruin. The parties were informed that if a complete settlement was not reached during the informal conference, Member Bruin would notify the Panel of 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, which could include the issuance of a binding decision.

Pursuant to the Panel's procedural determination, the parties' representatives met with Member Bruin on March 4, 2008, at the Employer's offices in Sacramento, California. While the possibility of a voluntary resolution was explored, a settlement was not reached. The Panel has now considered the entire record

including Member Bruin's recommendations for resolving the dispute.

BACKGROUND

The Employer's primary mission is to sustain the health, diversity and productivity of the public lands in California for the use and enjoyment of present and future generations. The Union represents 740 non-professional employees, including temporary and seasonal employees. The parties' MLA expired in 2006, but the parties are following its terms until a successor agreement is effectuated.

ISSUES

The parties essentially disagree over: (1) the amount the Employer should contribute toward the Union's travel and *per diem* expenses to fulfill its representational duties under Article 17.5; and (2) whether the provision in Article 20.1, "Merit Promotion, Filling of Vacancies and Details to Bargaining-Unit Positions," of the previous MLA should be continued in the successor MLA.

1. Article 17.5 - Travel and Per Diem

a. The Employer's Position

The Employer proposes that Article 17.5 read as follows:

a. Both parties are responsible for maintaining the reasonable expenditure of government travel and *per diem* funds for Union travel associated with representation of the bargaining unit. To meet this responsibility the Employer shall pay Union travel and *per diem* for representational purposes up to **\$8,000.00** per fiscal year for the duration of this contract; unused portions of this yearly allowance not to be carried forward into the next fiscal year. This **\$8,000.00** funding will cover reasonable travel and *per diem* costs in connection with proceedings of the Negotiated Grievance Procedure and travel costs associated with: disciplinary replies; mid-term negotiations instigated by the Union and such preparation for and participation in this bargaining; and, costs for use of government vehicles or privately owned vehicles. However, when a grievance meeting

or/mid-term negotiation cannot be completed in one day due to scheduling by management, the Employer will pay for the extra *per diem* costs as a result of this scheduling without debit to the \$8,000.00 fiscal year allowance provided to the Union for representation purposes.

b. For its share, the Union shall be responsible to pay for: 1) Union representational cost after the expenditure of the \$8,000.00 allowance provided the Union by the Employer; and, 2) all the Union costs for travel associated with Union sponsored training, lobbying activities, and any Union decision to voluntarily take on a representational role in third party proceedings other than those before the FSIP and the FLRA.

c. Whenever possible and economical, travel within California shall be by Employer-provided GSA vehicle, if available. If a GSA vehicle is not available, the Employer shall pay personally-owned vehicle mileage for representational travel in accordance with appropriate regulation. It also is understood by the parties that the Employer will make payment of travel and *per diem* expenses to a Union representative only upon determining that the Union representative is authorized official time in accordance with this agreement.

d. For Union travel and *per diem* associated with mid-term bargaining instigated by the Employer, see Article 43, Section 43.2(f). For Union travel and *per diem* associated with Employer-instigated meetings requiring a Union presence such as a "Formal Meeting" or a meeting resulting from an employee invoking their Weingarten Right, the Employer will be responsible for all appropriate travel and *per diem* costs as a result of this type meeting between an Employer representative and a bargaining unit employee.

e. When appropriately designated by the Union President or their designee to represent an employee or the Union, an employee acting in the capacity of a Union representative will be subject to all BLM employee limitations on the use of a government charge card. The availability of compensation for travel expenses for an employee acting in the capacity of a

representative of the Union will be in accordance with a, b, c & d above.

Payment of the Union's travel and *per diem* expenses became a significant issue when the Union at the National level successfully petitioned the Federal Labor Relations Authority (FLRA) to consolidate Locals 951 and 2152, representing BLM employees in separate geographical areas of the State of California, into one unit represented by Local 2152. As a result of the consolidation, the Union's travel and *per diem* expenses could increase substantially. For example, situations may now arise where a Union representative from Southern California is designated by the Union to represent an employee in Northern California. The Employer's proposal gives management the ability to control its contribution toward such costs by capping payments for certain representational duties requiring travel at \$8,000 per fiscal year. The proposed wording also specifies certain representational situations where the Union's travel and *per diem* expenses will be paid entirely by the Employer without drawing from the \$8,000 allotment. The Employer's offer recognizes the Union's right to choose its representatives while ensuring there is a cost incentive that protects the Employer against the abuse/misuse of travel funds.

b. The Union's Position

Under the Union's proposal, Article 17.5 would contain the following wording:

a. Both parties are responsible for maintaining the reasonable expenditure of government travel and *per diem* funds for Union travel associated with representation of the Bargaining Unit. To meet this responsibility the Employer shall pay Union travel and *per diem* for representational purposes. Union travel and *per diem* expenses provided by the Employer for proceedings associated with the negotiated grievance procedure will be capped at \$13,000 per fiscal year. However, when a grievance meeting, including travel to and from, cannot be completed in one day due to scheduling by management, the employer will pay for the extra *per diem* costs without debit to the \$13,000 fiscal year allowance provided to the Union for negotiated grievance purposes.

b. The Union shall be responsible to pay for: 1) Union representational costs after expenditure of the

\$13,000 allowance provided to the Union by the Employer, and 2) all the Union costs for travel associated with Union sponsored training, lobbying activities, and Union representation at third party proceedings other than those before FSIP, FLRA, and arbitration. The liability for Union travel expenses for arbitration will be in accordance [with] Article 38 - Arbitration.

c. Whenever possible and economical, travel within California shall be by Employer provided GOV, if available. If a GOV vehicle is not available, the Employer shall pay personally-owned vehicle mileage expenses for representational travel in accordance with appropriate regulation. It is also understood by the parties that the Employer will make payment of travel and *per diem* expenses to a Union representative only when the Union representative has been authorized official time in accordance with this agreement.

d. For Union travel and *per diem* associated with Employer-instigated meetings requiring a Union presence such as, but not limited to, a "Formal Meeting" or a meeting resulting from an employee invoking their Weingarten Right, the Employer will be responsible for all appropriate travel and *per diem* expenses incurred by a Union representative which result from this type of meeting between an Employer representative and a bargaining-unit employee.

e. When appropriately designated by the Union President or their designee to represent an employee or the Union, an employee acting in the capacity of a Union representative will be subject to all BLM employee limitations on the use of a government charge card. The availability of compensation for travel expenses for an employee acting in the capacity of a Union representative will be in accordance with this section. Use of the government charge card for official business travel and *per diem* expenses as part of the negotiated grievance procedure which exceed the \$13,000 cap shall be allowed, however, the Union will not receive reimbursement.

f. The Employer will be responsible for developing a system that accurately tracks all travel and *per diem* expenses. The system will be developed in

consultation with the Union. The Union will be provided an accurate accounting of the status of travel and *per diem* expenses by the 10th of each month. Discrepancies will be addressed by the parties within ten working days.

The Union recognizes the need for cost certainty related to the payment of travel and *per diem* expenses for Union representational purposes. Its proposal strikes an appropriate balance as it gives the Employer the ability effectively to control costs while at the same time ensuring that the Union has the resources it needs to properly represent the bargaining unit. Despite the concerns raised by the Employer, it could not cite any specific instances during the term of the MLA where the Union has misused/abused travel and *per diem* expenses. Finally, its proposal would establish a jointly-developed reporting system that will give the parties accurate data on the use of travel and *per diem* expenses for Union representational purposes.

CONCLUSION

After carefully considering the record established by the parties in this case, we shall order the adoption of a modified version of the Employer's proposal to resolve the dispute. Both sides now agree that the state-wide consolidation of the bargaining unit warrants the implementation of a cap on the amount the Employer should be required to contribute to the Union's travel and *per diem* expenses. In the absence of data regarding previous representational activity, we are persuaded that a maximum Employer contribution of \$8,000 per fiscal year for the duties identified in its proposal is reasonable. In order to provide an evidentiary basis for adjusting the annual cap in the future, however, we are also persuaded that the Employer should implement a reporting system to record the purpose of Union representational travel along with the actual costs. Accordingly, we shall add subsection f. to the Employer's proposal as follows:

The Employer will develop a record-keeping system that captures the amount of travel and *per diem* expenses used along with the reasons why. The Union will be provided a copy of this information on a quarterly basis. Should the Union request to meet with the Employer to discuss the information, such meeting will occur within ten (10) working days of the request.

2. Merit Promotion, Filling of Vacancies and Details to Bargaining-Unit Positions

a. The Union's Position

The Union's proposal on this issue is as follows:

The Employer retains the right to select or not select an Employee (s) for competitive merit promotion or non-competitive promotion under the procedures set forth in this agreement, and in accordance with applicable law and regulation.

The Union is merely proposing to continue a provision that has been in the parties' MLAs for years. It applies to filling bargaining-unit, non-bargaining-unit and supervisory positions. The Employer cannot cite any instances where the provision has caused any problems.

b. The Employer's Position

The Employer does not have a counter offer regarding this issue and requests the Panel to order the Union to withdraw its proposal. In this regard, the Union interprets its proposal as applying not only to the filling of bargaining-unit positions but also to the filling of non-bargaining-unit and supervisory positions. Given this interpretation, the Union's proposal does not concern conditions of employment of bargaining-unit employees and, therefore, involves a permissive subject of bargaining under section 7106(b)(1) of the Statute that is negotiable only at the election of the Agency. The Employer has informed the Union that it has elected not to bargain over this issue. It has also provided the Union with a written declaration of non-negotiability. The Union has not filed a petition for review with the FLRA to determine whether the proposal is within management's duty to bargain.

CONCLUSION

After carefully considering the evidence and arguments presented by the parties, we shall order the Union to withdraw its proposal. The Union has failed to demonstrate the need to include the provision in the parties' successor MLA.

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 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the following:

1. Article 17.5 -- Travel and Per Diem

The parties shall adopt the Employer's proposal with the addition of the following subsection:

f. The Employer will develop a record-keeping system that captures the amount of travel and *per diem* expenses used along with the reasons why. The Union will be provided a copy of this information on a quarterly basis. Should the Union request to meet with the Employer to discuss the information, such meeting will occur within ten (10) working days of the request.

2. Article 20.1 - Merit Promotion, Filling of Vacancies and Details to Bargaining-Unit Positions

The Union shall withdraw its proposal.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

May 12, 2008
Washington, D.C.