

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE ARMY
U.S. ARMY COMMUNICATIONS-ELECTRONIC
RESEARCH, DEVELOPMENT AND
ENGINEERING CENTER
FORT MONMOUTH, NEW JERSEY

and

LOCAL 476, NATIONAL FEDERATION OF
FEDERAL EMPLOYEES, FEDERAL
DISTRICT 1, IAM&AW, AFL-CIO

Case No. 06 FSIP 127

DECISION AND ORDER

The Department of the Army, U.S. Army Communications-Electronic Research, Development and Engineering Center, Fort Monmouth, New Jersey (Employer or CERDEC) 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 476, National Federation of Federal Employees, Federal District 1, IAM&AW, AFL-CIO (Union).

Following an investigation of the request for assistance, the Panel determined that the dispute, which concerns the implementation of a personnel demonstration project (hereinafter demo project) that arose during negotiations over a new collective-bargaining agreement (CBA), should be resolved through an informal conference with Panel Member Mark A. Carter. The parties were informed that if a complete settlement was not reached during the informal conference, Member Carter would notify the Panel of the status of the dispute, including the parties' final offers. After considering this information, the Panel would take whatever action it deems appropriate, which may include the issuance of a binding decision.

Pursuant to the Panel's procedural determination, the parties participated in an informal conference with Member Carter on

January 18, 2007, in the Panel's offices in Washington, D.C., but no settlement was reached over the Employer's proposal for a demo project.^{1/} The Employer submitted its final offer and, shortly thereafter, the parties filed written statements of position concerning the issue. The Panel has now considered the entire record.

BACKGROUND

The Employer operates a Science and Technology Laboratory and it also has an engineering support mission. The Union represents a bargaining unit consisting of approximately 950 engineers and scientists. The parties are governed by the terms of a CBA that was implemented in 1980 and renewed annually after its initial 3-year term. As a result of a transfer of function in 2004 by the Department of the Army, bargaining-unit employees became part of CERDEC, a newly-established entity. The parties filed a joint petition with the Federal Labor Relations Authority (FLRA) seeking to have CERDEC named as the successor employer and Local 476, NFFE identified as the exclusive representative for the new bargaining unit. In November 2004, the FLRA issued a Certification of Representation; subsequently, the parties began negotiations over a new CBA.

ISSUE AT IMPASSE

The parties disagree over the Employer's proposal to implement a demo project for a 2-year trial period.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union maintains that the Panel should decline to retain jurisdiction over this issue because there is no statutory requirement for the Union to negotiate over the Employer's proposal. Whether a demo project is a mandatory subject of bargaining is a matter that the Federal Labor Relations Authority (FLRA) has yet to address; thus, the Panel lacks the

^{1/} The informal conference also involved two other issues, concerning official time and duration of the contract, that the parties reached impasse over during their CBA negotiations. They were part of a separate request for assistance filed by the Employer in Case No. 07 FSIP 18. As a result of discussions during the meeting, a voluntary settlement was reached regarding those two issues.

authority to impose a demo project upon an unwilling union. Moreover, the Union contends that, under 5 U.S.C. § 4703(f)(1),^{2/} a demo project may not be implemented where it would violate an existing CBA. In this regard, implementation of the Employer-proposed demo project would violate Article 10, Position Descriptions, and Article 11, Incentive Awards, of the current CBA because it would create a new personnel system that contravenes these provisions.

If the Panel determines to retain jurisdiction, it should direct the parties to maintain the *status quo*, *i.e.*, retain articles in the current CBA concerning position descriptions, incentive awards, and merit promotion because those articles are consistent with the traditional pay and personnel practices under Title 5 of the U.S. Code. The current system has worked well for both employees and the Employer. In this regard, the majority of bargaining-unit employees consist of long-term employees, demonstrating that the Employer's perceived problem in retaining employees is over-stated. Several surveys of all employees in the bargaining unit, and not just dues-paying Union members, disclose that employees do not want to participate in a demo project, so it can be inferred that they are satisfied with the current pay and personnel system. The Employer takes pride in the fact that during the past 3 years, employees developed and fielded over 30 systems; it should be noted that this exceptional work was performed by employees who are operating

2/ 5 U.S.C. § 4703 provides:

(f) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section-

(1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

(2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

under the current pay system and not a demo project. This proves that employees already are highly motivated and do not need the perceived pay incentives of a demo project to stimulate their productivity.

2. The Employer's Position

The Employer proposes that employees participate, for a 2-year trial period, in the Science and Technology Demonstration Project pursuant to the terms set forth in the October 30, 2001, Federal Register and Supplementary Internal Operating Procedures.^{3/} At the conclusion of the 2-year trial period, the Union may unilaterally choose to terminate participation or request negotiations to continue participation in the demo project. Implementation of the demo project would further the objective of the 1995 National Defense Authorization Act which establishes the Science and Technology (S&T) Reinvention Laboratory Demonstration Program designed to reform the classification, compensation and performance management systems that exist under the traditional human resource management model of the Federal Government. The proposed demo project would depart from the traditional personnel system in the areas of pay banding, pay for performance, and recruitment initiatives. Its implementation is intended to foster the effectiveness of the Employer's laboratory through a more flexible and responsive personnel system designed to aid in the recruitment, development, retention and motivation of a high quality workforce.

In addition, pursuant to a recommendation by the Defense Base Closure and Realignment Commission (BRAC), the Employer's operation at Fort Monmouth is scheduled to be relocated to the Army's facilities at Aberdeen Proving Ground, Maryland, with the transfer to begin in 2008 and conclude in 2011. Typically, with such large scale transfers of personnel, it is likely that up to 80 percent of the workforce will not transfer to the new geographic area. Therefore, to prepare for this eventuality, the Employer needs to enhance its ability to recruit and retain high quality scientists and engineers to work at its Aberdeen, Maryland, facilities. The demo project would assist in these efforts by permitting management to offer higher starting salaries to entry level scientists. Also, since 36 percent of current bargaining-unit employees already have achieved the highest grade and step for their position, a pay banding program

^{3/} These two documents contain nearly 100 pages of instructions for implementing the demo project.

would allow the Employer to offer continued pay progression for these employees, and others, through a pay band, without competitive promotion, based on individual performance. This potential for higher salary may favorably influence current employees to relocate to Aberdeen and thereby allow the Employer to retain its highly qualified scientists and engineers. Moreover, the success of a similar demo project implemented in 2002 that affects 400 engineers and scientists (who are not part of a bargaining unit) at the Employer's Night Vision Laboratory in Fort Belvoir, Virginia, supports its expansion to the CERDEC laboratory in Fort Monmouth. Finally, the proposal would give the Union the unilateral right to opt out of the demo project after the 2-year trial period.

CONCLUSIONS

Having carefully considered the parties' positions in this matter, we shall order the adoption of the Employer's proposal. Turning first to the Union's jurisdictional arguments, in our view it has misinterpreted the meaning of 5 U.S.C. § 4703(f). In this regard, the record establishes that the parties are bargaining over a new CBA, and that all of the provisions in the prior CBA are open for negotiations. Thus, under the circumstances, the Employer's decision to propose the demo project is appropriate. Nor does there appear to be any legal impediment regarding the Panel's authority to impose the Employer's proposal, since the parties have completed their bargaining obligations under 5 U.S.C. § 4703(f)(2) and are at impasse. Furthermore, the Union has not cited any case law in support of its position that a demo project is a permissive subject of bargaining for the Union. With respect to the merits of the demo project, we are persuaded that its implementation would provide the Employer with certain flexibilities concerning pay and awards that may attract new hires for its Aberdeen operation and help retain highly qualified employees who otherwise would not be inclined to relocate to a new geographic area.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the parties to adopt the Employer's proposal.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

April 9, 2007
Washington, D.C.