

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF TRANSPORTATION  
SAINT LAWRENCE SEAWAY DEVELOPMENT  
CORPORATION  
MASSENA, NEW YORK

and

LOCAL 1968, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 07 FSIP 27

**DECISION AND ORDER**

Local 1968, 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 (Statute), 5 U.S.C. § 7119, between it and the Department of Transportation, Saint Lawrence Seaway Development Corporation, Massena, New York (Employer).

After investigation of the request for assistance, the Panel determined that the dispute concerning negotiations over Article 41, Mutual Exchange of Shifts (also known as shift swaps), § 41.3 of the parties' successor collective bargaining agreement (CBA), should be resolved through single written submissions. The parties were informed that after considering the entire record, the Panel would take whatever action it deems appropriate to settle the matter, which may include the issuance of a *Decision and Order*.

**BACKGROUND**

The Employer, a wholly-owned Government corporation under the Department of Transportation, provides transit for ocean-going vessels through the Eisenhower and Snell deep-water locks in the Montreal to Lake Ontario section of the Great Lakes-Saint Lawrence Seaway System. The Union represents approximately 103 employees who typically work as machinists, millwrights, welders, pipe fitters, carpenters, and office automation

assistants at grades WG-2 through -11. The collective bargaining agreement (CBA) covering these parties expired on September 30, 2006. With the resolution of the issue currently before the Panel, the parties will have completed the process of negotiating a successor agreement.

### ISSUE AT IMPASSE

The parties essentially disagree over whether the Employer should be entitled temporarily to shut down the entire shift swap program for abuse by as few as one employee.

### POSITION OF THE PARTIES

#### 1. The Employer's Position

The Employer proposes the following wording:

If unscheduled overtime is incurred as a result of this program by an employee, circumstances surrounding the event will be considered by management prior to any decision to temporarily cancel the program.

A. Any instance of overtime in a navigation season directly due to abuse by one or more employees may result in cancellation of the program for the next four navigation season months (*i.e.*, if the program is cancelled November 15, 2007, it will remain cancelled until June 15, 2008). The cancellation will be effective two pay periods after the instance giving rise to the cancellation.

1. No new requests will be accepted after a cancellation date is determined.
2. All current requests on hand will be cancelled except for those that are active (*i.e.*, the covering employee is required to complete a swap).
3. A memo will be provided to all Locks continuous duty employees, giving the details of the temporary cancellation and the date the program will again become effective.

When the shift swap program was first negotiated over 4 years ago, the parties discussed the potential for increased overtime costs. With the assistance of a Panel representative, the Employer's concern was resolved by including a provision that the program could be shut down "if any unscheduled overtime was paid solely as a result of absences within the control of employees in the program."<sup>1/</sup> Although the program "has moved past the pilot stage," it is imperative that the Panel preserve a provision that would allow management to continue to shut down the program, at least temporarily, as a continuing incentive against abuse by employees. In its view, the shift swap program has "worked so well" precisely because employees know that a slip up by any one of them would have adverse consequences for everyone. The Panel also should consider the fact that its proposal represents a "softened" version of the program, which it is able to offer because of the program's past success, and that the Union "has not shown any evidence to indicate that management will make an unreasonable use of the shut down provision."

## 2. The Union's Position

The Union proposes the following:

The parties agree that any unscheduled overtime that is paid by the Employer solely as a result of an absence, or any other abuse within the control of the employee will result in the immediate removal of that employee from the program. For example, if any employee is scheduled to pay back a shift exchange calls in for ANY unscheduled leave, this may be considered abuse.

The Panel should adopt its proposal because there is no evidence that over the course of the 4 years that the program has been in effect, there have been "any" absences or unscheduled overtime within the control of an employee. Further, the Employer should only discipline the employee at fault, not all employees for the "mistake" of one.

---

<sup>1/</sup> Unlike its current proposal, among other things, the existing contract article permits the Employer to shut down the program permanently in cases of unscheduled overtime, and limits the availability of shift swaps only from May to November of each year.

**CONCLUSION**

Having carefully considered the evidence and arguments presented by the parties on this issue, we conclude that, on balance, the Union's proposal provides the better basis for resolving the dispute. In our view, it is unclear whether the program's past success is solely attributable to the Employer's ability to shut it down for any employee abuse. Given that the parties have conducted two trial periods, and that there has been no evidence of abuse, we believe that employees have earned the right to continue the program without such a stringent requirement. Should abuses occur in the future, the Employer will have the opportunity to propose its approach again when the contract expires. Accordingly, we shall order the adoption of the Union's proposal.

**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 by 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:

The parties shall adopt the Union's proposal.

By direction of the Panel.

H. Joseph Schimansky  
Executive Director

March 26, 2007  
Washington, D.C.