

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION
GODDARD SPACE FLIGHT CENTER
WALLOPS FLIGHT FACILITY
WALLOPS ISLAND, VIRGINIA

and

LOCAL 2755, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 08 FSIP 104

DECISION AND ORDER

Local 2755, 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 National Aeronautics and Space Administration, Goddard Space Flight Center (GSFC), Wallops Island Facility, Wallops Island, Virginia (Employer).

Following an investigation of the request for assistance, which arose during negotiations over Directive No. GPR 3511.1A, "Promotion Processes at the [GSFC]," the Panel determined that the issues should be resolved through an informal conference with Panel Member Grace Flores-Hughes. The parties also were notified that if no settlement were reached, Member Flores-Hughes 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 resolve the matter by taking whatever action it deemed appropriate which could include the issuance of a binding decision.

Pursuant to this procedural determination, Member Flores-Hughes conducted an informal conference with the parties on

December 4, 2008, in the Panel's offices. During the course of the meeting, the parties reached a voluntary resolution on two of the three issues at impasse. At the close of the meeting, the Union submitted its final offer; the Employer did not have a counter proposal. Both parties provided oral summary statements of their respective positions on the unresolved matter. The Panel has now considered the entire record in the case.

BACKGROUND

The Employer's primary mission is to expand knowledge of the Earth and its environment, the solar system and the universe through observations from space. The Union represents a bargaining unit consisting of 150 professional and non-professional General Schedule employees. Approximately 60 hold positions as scientists and engineers; the rest primarily are employed as electronic engineering technicians, aerospace technicians, construction control representatives, mechanical engineering technicians and secretaries. The parties' collective-bargaining agreement (CBA), which was to have expired in 2005, has rolled over annually for the past 3 years.

ISSUE AT IMPASSE

Essentially, the parties disagree over the extent to which employees in non-professional positions should be provided with information regarding promotions based upon an accretion of duties for their positions.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes the following:

For employees currently at their Full Performance Level (FPL) in their position, management from the respective organization will, upon employee request, define, in writing, what it describes as duties beyond the FPL so that these employees will know when they are performing what management defines as higher graded work.

Insofar as possible, the Employer will normally avoid assigning incidental duties and functions which are inappropriate to an employee's position and qualifications, or other functions not reasonably

related to an employee's job classification or position description, unless such duties and functions will most assuredly result in a promotion beyond the employees FPL.

Its proposal is intended to help non-professional employees assess whether they are performing duties above the grade level for their position and, if so, to take steps to request a promotion based upon an accretion of duties. Many of these employees have reached the highest grade levels for their positions but are asked to perform work that is more consistent with a higher graded position. As a result, employee morale has deteriorated. The proposal would provide a solution to the problem. The Employer has published accretion criteria for employees who hold positions as scientists and engineers resulting in promotions to GS-14 and GS-15 positions and, to be fair and equitable, management should do the same for employees in other occupational series.^{1/} A written definition of what constitutes work beyond an employee's full performance level would provide employees with clear guidance to rely upon when assessing whether they consistently perform work at a higher graded level that would warrant a promotion. The second part of the proposal is intended to prevent the continuation of the current situation where some managers assign employees incidental duties and functions that are inappropriate given the employee's position and qualifications. Such assignments tend to decrease the likelihood of obtaining a promotion based on the accretion of higher graded duties. The Federal Labor Relations Authority has found substantially similar proposals to be within the duty to bargain.^{2/}

1/ The record indicates that written criteria were developed for scientists and engineers several years ago as part of an Equal Employment Opportunity (EEO) settlement.

2/ In support of the negotiability of its proposal, the Union cites American Federation of Government Employees, Local 1658 and U.S. Department of the Army, Army Tank-Automotive Command, Warren, Michigan, 44 FLRA 1375 (1992) (proposal 10), and American Federation of Government Employees, AFL-CIO, Local 1999 and Army-Air Force Exchange Service, Dix-McGuire Exchange, Fort Dix, New Jersey, 2 FLRA 153 (1979) (proposal II).

2. The Employer's Position

The Panel should order the Union to withdraw its proposal. Developing criteria for promotions based upon an accretion of duties for all non-professional positions in the bargaining unit would be costly and time consuming. It also is unnecessary because such promotions are rare. Furthermore, the Union's interest already has been addressed in a provision previously agreed upon by the parties that requires management to give employees a written assessment of readiness for promotion to include: (1) an evaluation of the current grade level of duties being performed; (2) a description of higher level duties that would support a promotion based upon an accretion of duties; and (3) a determination of the need or availability of work at the higher level. Moreover, Directive No. GPR 3511.1A also addresses the criteria for determining promotability in non-competitive situations for employees other than those who hold positions as scientists and engineers. In this regard, section 1.4.2(d) of the policy provides that while promotions beyond an employee's Full Performance Level may occur infrequently, first line supervisors should work with their human resources personnel "to determine if an accretion promotion is appropriate, and then how best to proceed to document the impact and reclassify the position accordingly." As to the second paragraph of the Union's proposal, the wording appears to interfere with management's right to assign work because it would prevent the Employer from assigning "incidental duties" to employees.

CONCLUSIONS

Having carefully considered the parties' positions on this issue, we shall order the Union to withdraw its proposal. The parties' previously agreed upon provision and the promotion policy both provide avenues for employees to pursue to determine whether they consistently perform duties above the Full Performance Level for their positions. Thus, the Union's proposal appears to require the implementation of a redundant process for which there is no demonstrated need.

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:

The Union shall withdraw its proposal.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

December 22, 2008
Washington, D.C.