



UNITED STATES
FEDERAL SERVICE IMPASSES PANEL

WASHINGTON, DC 20424-0001

September 15, 2010

Mr. Bryan Evans
Labor Relations Officer
Department of the Air Force
Luke Air Force Base
7383 N. Litchfield Rd
Luke AFB, AZ 85309

Mr. Harley Hembd
President
AFGE, Local 1547
7245 N. Fighter Country Ave
Luke AFB, AZ 85309

RE: Department of the Air Force
Luke Air Force Base
Luke AFB, Arizona and
Local 1547, AFGE, AFL-CIO
Case No. 10 FSIP 97

Gentlemen:

Enclosed herewith is the Arbitrator's Opinion and Decision in the above captioned case.

Sincerely yours,

A handwritten signature in cursive script that reads "H. Joseph Schimansky".

H. Joseph Schimansky
Executive Director

cc: Phillip Tidmore
AFLOA/LLFCS

In the Matter of

DEPARTMENT OF THE AIR FORCE
LUKE AIR FORCE BASE
LUKE AFB, ARIZONA

and

LOCAL 1547, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 10 FSIP 97

ARBITRATOR'S OPINION AND DECISION

Local 1547, American Federation of Government Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of the Air Force, Luke Air Force Base, Luke AFB, Arizona (Employer) to resolve an impasse arising from negotiations which first began in 2006 when the Union proposed that unit employees be allowed to use the two Luke AFB appropriated fund mess halls and be charged the same prices as other personnel.

Following investigation of the request for assistance, the Panel determined that the dispute should be resolved through mediation-arbitration with the undersigned, Panel Member Edward F. Hartfield, in conjunction with two other negotiation impasses involving the same parties. The parties were informed that if settlement on any of the issues at impasse were not reached during mediation, I would issue a binding decision to resolve those open issues.

Consistent with the Panel's procedural determination, on August 10, 2010, I conducted a mediation-arbitration proceeding with representatives of the parties at Luke AFB in Arizona. During the mediation phase, the parties were unable to settle the matter voluntarily. Thus, I am required to issue a final decision resolving the parties' dispute in accordance with the Statute and 5 C.F.R. §2471.11 of the Panel's regulations. In reaching this decision, I have considered the entire record, including the parties' pre-hearing and hearing submissions.

BACKGROUND

The Employer's primary mission is to train F-16 fighter pilots and crew chiefs. The Union represents a bargaining unit consisting of approximately 800 non-professional General Schedule and Wage Grade employees. The parties' most recent collective bargaining agreement (CBA) expired in 2000; they continue to follow it as "past practice," with the exception of certain provisions deemed by the Union to be permissive subjects of bargaining.

The proposal arose during Union-initiated mid-term bargaining and included two other proposals that would have permitted unit employees to become members of two Luke AFB clubs run by Luke's non-appropriated fund instrumentalities (NAFIs). At that time, the Employer alleged that all three of the Union's proposals were outside of its duty to bargain because they did not concern conditions of employment. In AFGE, Local 1547 and U.S. Department of the Air Force, Luke Air Force Base, Arizona, 64 FLRA 635 (April 7, 2010), the Federal Labor Relations Authority (FLRA) rejected the Employer's arguments by a 2-1 vote and ordered the Employer to negotiate over the proposals. Following receipt of the FLRA's negotiability decision, the parties met for two bargaining sessions with the assistance of the Federal Mediation and Conciliation Service (FMCS) without success. FMCS referred the parties to the Panel.

ISSUE AT IMPASSE

The parties disagree over the following Union proposal:

Bargaining unit employees will be allowed to use the Ray V. Hensman dining facility (Chow Hall) and the Falcon Inn (Flight-line dining facility). There will be no surcharges, assessments, or adjustments of any other name or type to the prices paid by bargaining unit employees. Bargaining unit employees will pay the same prices charged to other Luke personnel.

It should be noted that during the mediation portion of the proceeding, the Union submitted the following modification of its proposal:

Bargaining unit employees with line badges will be allowed to use the Falcon Inn Flight Line dining facility. There will be no surcharges, assessments, or adjustments of any other name or type to the prices

paid by bargaining unit employees. Bargaining unit employees will pay the same prices charged to other Luke personnel.

The Employer did not have any new proposals during mediation and rejected the Union's modified proposal.

POSITIONS OF THE PARTIES

1. The Union's Position

The basis of the Union's proposal is to provide a source of hot meals for unit employees when they otherwise may not have access to them. It points to the group of firefighters, gate guards, and police officers that work 24-hour shifts 7-days-per-week. While the Union acknowledges that there are many fast food-type places to eat around Luke AFB, this proposal would provide a healthier alternative. The Union also notes that life at Luke AFB has changed dramatically since 9/11, citing that there are fewer gates to access the facility and that the remaining gates can get busy, causing delays for employees who want to go in and out during abbreviated lunch periods. Further, a number of other dining options have been closed or had their operations reduced in the last few years, including: (1) the closing of one of the two Luke AFB clubs; (2) the shutting of a hospital cafeteria; and (3) the removal of most of the vending machines. It also alleges that there have been price and membership restrictions at the remaining Luke AFB club. Finally, the Union points to an announced pilot program at six other Air Force bases that would combine or otherwise consolidate dining options, with one of its goals being to restore a family-type atmosphere at those bases. The Union believes that the pilot is an indication of major changes down the road in how base dining will be conducted, thereby suggesting that Luke AFB can and should get its own start on doing the same.

2. The Employer's Position

The Employer proposes to maintain the *status quo* by continuing to deny unit employees access to the dining facilities. It contends that the primary purpose of the dining facilities is to feed the airmen on base, yet recent budget reductions have required it to restrict dining hall privileges at the subsidized rate to only the lowest levels of airmen, E-1 through E-5. It points out that it has been forced to limit airmen at the upper ranks, E-6 through E-9, to just receiving a

form of cash subsidy towards their living costs (BAS) because there is no longer room in the budget to fully subsidize their meals. The Employer states that the costs of the Afghanistan War have resulted in a 25-percent budget reduction across the Air Force that, among other things, has closed 17 dining facilities at other bases.

The Employer further maintains that it would be a financial burden for the Air Force to expand access to the dining facilities because: (1) the contract with the dining vendor is limited to a specific number of meals to manage costs; (2) the current budget situation does not allow it to increase the vendor's contract; (3) it can't allow the civilian work force to eat at the same rates as the military because the military rates are subsidized; (4) having the employees pay the difference between the subsidized costs and the full costs would amount to mixing appropriated and non-appropriated funds, which is prohibited by a provision in the National Defense Authorization Act.

The Employer cites the abundance of relatively low-cost dining options in and around the base and notes that, with recent completion of a bridge, employees can quickly traverse the base without having to leave the gates. It further notes that the pilot project that the Union refers to at six other bases has not yet been implemented and that the nature of the pilot is to explore a completely different kind of change in dining hall facilities than the type requested by the Union's proposal. The Employer claims not to have the authority to initiate such a pilot at Luke AFB until the original pilot has been evaluated by the Government Accounting Office and the results of the changes are proven to be cost effective to the Air Force.

STATEMENT OF FINAL POSITION OF THE PARTIES

Before adjourning the hearing on this matter, I requested the parties to articulate a final statement of position for the Arbitrator. The Employer's position is stated as:

Bargaining unit employees will not be allowed to use the Ray V. Hensman Dining Facility or the Falcon Inn Flight Kitchen based on contractual/financial considerations since these facilities are for enlisted members using appropriated funding from the National Defense Authorization Act (NDAA).

The Union's final statement of position is summarized as follows:

FLRA case law provides that items left to the discretion of an agency head are negotiable, including the application of regulations. Since the Luke AFB Commander (i.e., agency head) restricted access to the dining facilities, the Base Commander has the ability to open the matter for negotiations. The Union believes that there is no government law or regulation that prevents the bargaining unit employees from using these dining facilities. The Union further states that unit employees are willing to pay their fair share of the costs, moving off of its previous insistence that they pay the same prices as the military, and that it is willing to accept the use of the Falcon Inn for aircraft workers.

CONCLUSION

Having carefully considered the evidence and arguments presented by the parties, I conclude that the Union's modified proposal provides the more reasonable basis for resolving the dispute. The Employer's case essentially is based upon the implications of having to assume the full burden of feeding all or most of the bargaining unit at both dining facilities. If the Union had not changed its position, that is, if it was still insisting that access for all employees to both appropriated fund dining facilities (i.e., Ray V. Hensman Hall and the Falcon Inn) be provided at the same rates as are paid by military employees, I would have little choice but to find in favor of the Employer.

The unique circumstances of this particular case, however, provide compelling reasons to find in favor of the Union's modified proposal. First, the Union has limited the scope of the employees involved to just the aircraft maintenance employees and not the entire bargaining unit. In so doing, it has taken the Employer's argument about the financial implications of having to increase capacity to handle the full bargaining unit off the table. Second, the Union voluntarily has limited the scope of its dining facility proposal to just the Falcon Inn. Third, in severing its earlier proposals having to do with the non-appropriated funded dining clubs from this proposal, it has removed the Employer's argument about its inability to mix those funding sources. Fourth, by limiting access to the aircraft maintenance workers it represents, the likelihood is that the two groups that will make most use of the


Falcon Inn will be the aircraft workers and the airmen who operate the aircraft that the bargaining unit maintains, providing a small, but significant opportunity to purchase their food together, helping to breaking down some barriers, real or perceived.

I am further convinced that the number of bargaining unit employees that actually take advantage of this option on a daily basis will be very manageable, and that the overall costs to the Air Force of providing the subsidized meals would be minimal. Since the Falcon Inn meal selection is not overly broad, it is not likely that it will become an overwhelming favorite for the aircraft maintenance workers, but rather, a convenient choice that they can walk to and not stray very far from their duty stations during short lunch periods. In this regard, the Air Force Director of Dining Operations, George Miller, responded during cross examination at the hearing that an additional 100 meals would probably not create any additional hardships or burden for the Air Force. If base management orders an additional 100 meals for the Falcon Inn, they will be offered on a first-come, first-served basis. When the additional meals are gone, then employees will simply be faced with the same situation that they might encounter eating at a small restaurant or diner: When the "special" is gone, another choice will have to be made.

DECISION

The parties shall adopt the following wording to resolve their impasse:

Effective November 1, 2010, bargaining unit employees with line badges will be allowed to use the Falcon Inn Flight Line dining facility. There will be no surcharges, assessments, or adjustments of any other name or type to the prices paid by bargaining unit employees. Bargaining unit employees will pay the same prices charged to other Luke AFB personnel.


Edward F. Hartfield
Arbitrator

September 15, 2010
St. Clair Shores, Michigan