

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF VETERANS AFFAIRS
VETERANS BENEFITS ADMINISTRATION
COLUMBIA REGIONAL OFFICE
COLUMBIA, SOUTH CAROLINA

and

LOCAL 520, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 10 FSIP 88

DECISION AND ORDER

Local 520, 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 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), between it and the Department of Veterans Affairs, Veterans Benefits Administration, Columbia Regional Office, Columbia, South Carolina (VBA or Employer).

Following an investigation of the request, which concerns the formation of a committee to address issues that arise under the VBA Policy on Management of Veterans' and Other Government Paper Records,^{1/} the Panel determined that the matter should be resolved through the issuance of an *Order to Show Cause* why the Panel should not impose the terms of a Memorandum of Understanding (MOU) which the parties signed, on April 22, 2010,

^{1/} This national policy establishes rules and procedures for the maintenance and destruction of veterans' records. It was developed in 2008 in response to an incident where thousands of veterans' records were inadvertently destroyed. At the national level, the parties agreed to permit local negotiations, consistent with Article 44, Section 4, of the master collective-bargaining agreement (MCBA), which addresses local bargaining.

as a result of their bargaining over the committee.^{2/} Under this procedure, the parties were directed to submit to the Panel, and each other, a list of the provisions in the MOU to which they object, and to provide alternate wording, if any, as well as any additional provisions each party proposes to include in the MOU. Thereafter, the parties were required to submit statements of position in support of their modified, added and/or deleted provisions, including any rebuttal argument concerning the other party's proposals.^{3/} After considering this information, the Panel would take whatever action it deems appropriate, which may include the issuance of a binding decision. The Panel now has considered the entire record, except as noted above.

BACKGROUND

The Employer's mission is to process compensation claims for veterans, provide counseling on education programs for disabled veterans, answer calls through a National Call Center, and absorb overflow work from other regional offices that have backlogs; the Employer also operates a satellite education office where education claims are processed for veterans enrolled under the G.I. bill. The Union represents a bargaining unit consisting of approximately 450 non-professional General Schedule employees who primarily hold positions as Rating Veterans Service Representative and Veterans Service Representative. Employees work in two regional office buildings, although a small number is assigned to military installations, and some work from home. The parties are covered by an MCBA between the Department of Veterans Affairs and the

2/ Shortly after signing the MOU, the Union exercised its option to withdraw from it because of objections to management's unilateral appointment of a chairperson for the committee. The MOU signed by the parties on April 22, 2010, is attached as Appendix A.

3/ Contrary to the instructions given by the Panel to the parties for submitting their responses to the *Order to Show Cause*, the Employer added two new proposals in its statement of position rather than including them in its initial list of modifications, deletions and additions to its proposed MOU. The Panel has determined not to consider the Employer's two additional proposals because: (1) they were not submitted in accordance with the Panel's procedural directions to the parties; and (2) their inappropriate submission deprived the Union an opportunity to respond to them.

National VA Council #53, American Federation of Government Employees. At the local level, the parties do not have a supplemental agreement in effect; rather, they operate pursuant to several MOUs on specific topics.

ISSUES AT IMPASSE

In essence, the parties disagree over: (1) the functions of the committee; (2) the composition of the committee; (3) the number of representatives to be appointed by the Union; (4) whether the committee members would be on official time or regular duty time for the meetings; (5) the frequency, duration and location of committee meetings; (6) whether the committee should have the authority to make recommendations to the Regional Office Director (RD) on proposed disciplinary actions against employees for violation of the new policy; (7) whether data that comes before the committee concerning disciplining or counseling of bargaining-unit employees should be "sanitized"; (8) whether committee decisions should be made by consensus; and (9) whether the MOU should include a reopener provision.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union, essentially, proposes the following modifications to the parties' April 22, 2010, MOU: (1) delete reference to a "working" committee; (2) require that the committee consist of two representatives appointed by management and two bargaining-unit employees appointed by the Union; (3) allow the committee to review all proposed disciplinary and counseling actions, and to make recommendations on the proposed actions before any discipline or counseling is finalized; (4) permit the committee to recommend alternative discipline, in lieu of discipline or counseling proposed by a supervisor; (5) permit the committee to review only sanitized data concerning employee disciplinary and counseling matters; (6) require committee decisions to be made by consensus and forwarded to the RD; (7) initially, the committee would meet once biweekly for 2 hours for the purpose of finalizing a local policy on the implementation of the national VBA policy and, thereafter, once a month for 2 hours to assess "the effectiveness of the finalized policy and make changes, as necessary"; (8) the committee would meet at mutually agreeable times, dates, and places that are reasonable and convenient; (9) the MOU would be in effect for a 6-month trial period, during which time, either party could withdraw from the agreement by providing written

notice to the other party; (10) at the end of the 6-month period, the parties could continue to have a committee; and (11) a demand by either party to reopen the MOU would be given within the 90-day period prior to the expiration of the 6-month trial period.

The Union contends that modifications to the MOU the parties agreed to on April 22, 2010, are needed because that agreement essentially renders ineffective the Union's role on the committee. In this regard, it permits management to have an undetermined number of representatives, while the Union would have only one. To ensure that the Union is not "railroaded," the parties should have equal numbers of representatives on the committee, with decisions and recommendations to be made by consensus concerning the times, dates and places of committee meetings, including recommendations to the RD on proposed discipline and counseling. During the 2 years since the national VBA policy has been implemented locally, management's discipline of employees for policy violations has been "uneven"; therefore, it is important that the committee have the opportunity to review disciplinary and counseling actions before they are taken and make recommendations to the RD, including addressing types of alternative discipline in lieu of management-proposed actions. The proposal that the committee should review only sanitized documents would protect employee privacy and help ensure that the committee recommendations are made fairly. It is not a "new" proposal, as the Employer contends, but rather a modification to an earlier Union proposal that the committee have the opportunity to make recommendations on all forms of discipline and counseling; the Union has the right to modify proposals during the course of bargaining, including procedures before the Panel. Also contrary to the Employer's contention, the proposal that the committee review disciplinary matters does not conflict with the MCBA; in this regard, Article 13, Section 5, "Alternative and Progressive Discipline," provides that alternative discipline is an appropriate subject for local negotiations.^{4/} Finally, a reopener provision would allow the parties to address issues that currently are not foreseeable.

^{4/} The Employer does not dispute that alternative discipline is an appropriate subject of bargaining and, in fact, the parties' April 22, 2010, MOU includes a provision on alternative discipline (Section 8).

2. The Employer's Position

The Employer proposes to retain the wording in the original MOU with the following exceptions: (1) Section 3 should be modified to permit the Employer to select a chairperson for the meetings, taking into consideration any recommendations from the Union; (2) Section 5 should be revised to eliminate the second sentence concerning the use of official time during a 6-month trial period; and (3) Sections 11, 12, and 13, which refer to a 6-month trial period, permit either party to withdraw from the agreement during the trial period, and allow for a reopener at the end of the 6-month period, should be eliminated.

The Employer maintains that, for the most part, the Panel should impose the terms of the MOU which the parties entered into voluntarily on April 22, 2010. The provisions are neither onerous nor the product of coercion or duress. Furthermore, they are equitable, lawful and preserve the rights and obligations conferred on the parties by the Statute. As originally negotiated, the committee was not intended to be a labor/management committee but, rather, a working committee with the Union permitted one representative on official time. As a management committee, the Employer should have the discretion to appoint a chairperson consistent with management's right to assign work, and to permit its committee members to be on duty time while serving. It is appropriate that the Union-appointed member should be on official time, and not duty time. Certain provisions in the MOU, however, should be changed. In this regard, all references in the original MOU that it was to have a 6-month duration, after which the parties could reopen the agreement, should be removed. At this point, the parties have invested too much time in the establishment of the committee to permit the MOU to expire after a short duration only to have the parties begin the bargaining process once again. The reopener provision should be eliminated so the parties have closure on this matter. Section 7 of the April 22, 2010, MOU should be retained, which requires management to follow Article 13, "Discipline and Adverse Action," and Article 16, Section 11, "Counseling," of the MCBA. In this regard, the MCBA already covers procedures to be used for employee counseling and discipline and the parties at the local level do not have the authority to modify a national agreement by allowing the committee to "weigh in" on and delay proposed discipline or counseling for employees. There is no need to redefine or rewrite disciplinary procedures for every policy which the Agency issues because the same disciplinary scheme is applicable for every Agency-issued policy.

CONCLUSIONS

After carefully considering the record established by the parties in this case, we are persuaded that their impasse should be resolved on the basis of the Employer's final offer, modified to allow the Union to appoint an additional representative to serve on the committee. In our view, the Union has failed to show cause why most of the modifications it has proposed to the MOU it voluntarily signed on April 22, 2010, should be adopted. The one exception, addressed in our modification, involves the legitimate concern that it may be underrepresented on the committee. Permitting the Union to appoint an additional committee member should ensure that the interests of unit employees are more effectively represented. On the whole, however, the Employer's final offer continues to maintain the basic tenants of the parties' original MOU without continuing those provisions which may have led to additional negotiations at the end of a trial period. In this regard, the Employer has demonstrated that the elimination of the 6-month trial period and the provision that would permit either party to opt out of the agreement is necessary to bring this matter to closure.

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 pursuant to the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the parties to adopt the following wording:

(1) A VARO working committee will be established to address the already implemented VBA policy on Management of Veteran's and Other Government Paper Records. Committee recommendations will be forwarded to the Director for approval/disapproval.

(2) Management will appoint members of the working committee, both non-bargaining and bargaining-unit employees, who will be on duty time while performing duties associated with the working committee. Management will select a chairperson for each scheduled meeting, after considering any recommendations from AFGE.

(3) The Union will be allowed two representatives on the committee, appointed by the Union.

(4) The Union representatives will be on official time while performing representational activities on the committee. Official time will not be charged to the Union's agreed to amount of official time.

(5) The committee will meet monthly, or more frequently if the committee determines by consensus, on dates decided by a majority vote. The function of the committee will be to assess the already implemented VBA Policy on Management of Veterans' and Other Government Paper Records.

(6) Management will comply with Article 13 and Article 16, Section 11, of the Master Agreement between the Department of Veterans Affairs when counseling and disciplining employees for violations of VBA Policy on Management of Veteran's and Other Governmental Paper Records.

(7) Committee recommendations addressing types of alternative discipline for violations of VBA Policy on Management of Veterans' and other Governmental Paper records will be made by majority vote and will be forwarded to the Director for approval/disapproval.

(8) At the first meeting, the committee will determine a standing time for all meetings as determined by a majority of the members.

(9) At the first meeting, the committee will determine a standing location for all meetings as determined by a majority of the members.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

January 12, 2011
Washington, D.C.

APPENDIX A

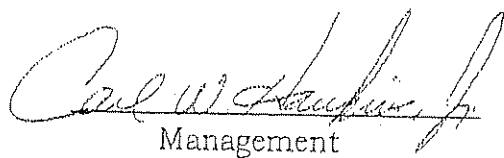
MEMORANDUM OF UNDERSTANDING

TRIAL PERIOD

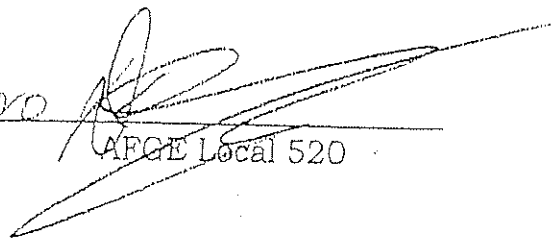
VBA Policy on Management of Veterans
And Other Governmental Paper Records
March 15, 2010

- 1 The following constitutes an agreement between the Department of Veterans Affairs, Columbia Regional Office and the American Federation of Government Employees, AFL-CIO 520.
- 2 A VARO working committee will be established to address the already implemented VBA Policy on Management of Veterans' and other Governmental Paper Records. Committee recommendations will be forwarded to the Director for approval/disapproval.
- 3 Management will appoint the members of the working committee, both non-bargaining and bargaining unit employees who will be on duty time while performing duties associated with the working committee.
- 4 The Union will be allowed one representative on the committee, appointed by the Union.
- 5 The Union representative will be on official time while performing representational activity on the committee. Official Time used for the six month trial period will not be charged to the Union's agreed to amount of official time.
- 6 The committee will meet monthly or more frequently if the committee determines by consensus, on dates decided by a majority vote. The function of the committee will be to assess the already implemented VBA Policy on Management of Veterans' and other Governmental Paper Records.
- 7 Management will comply with Article 13 and Article 16, Section 11 of the Master Agreement between the Department of Veterans Affairs and the American Federation of Government Employees regarding counseling and disciplining of employees for violations of VBA Policy on Management of Veterans' and other Governmental Paper Records.

- 8 Committee recommendations addressing types of alternative discipline for violations of VBA Policy on Management of Veterans' and other Governmental Paper records will be made by majority vote and will be forwarded to the Director for approval/disapproval.
- 9 At the first meeting, the committee will determine a standing time for all meetings as determined by a majority of the members.
- 10 At the first meeting, the committee will determine a standing location for all meetings as determined by a majority of the members.
- 11 This will be a six-month trial period, beginning on the date of the first meeting, which will be no later than thirty days of acceptance. Management agrees not to use the defense that the issue was not timely advanced to the Federal Services Impasse Panel by extending all such time periods by seven months.
- 12 Either party may withdraw from the trial period by providing written notice to the other party.
- 13 At the end of the six month trial period, by mutual agreement the parties may continue the committee, modify the committee, or the Union may advance the impasse issues that exist as of this date.


Management

4/27/2000
Date


AFGE Local 520