

In the Matter of

DEPARTMENT OF THE NAVY  
MILITARY SEALIFT FLEET SUPPORT  
COMMAND; SEALIFT LOGISTICS COMMAND,  
ATLANTIC; TAGOS PROJECT OFFICE;  
LOGISTICS FIELD DETACHMENT (N44)  
NORFOLK, VIRGINIA

and

LOCAL 53, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 12 FSIP 11

ARBITRATOR'S OPINION AND DECISION

The Department of the Navy, Military Sealift Fleet Support Command (MSFSC); Sealift Logistics Command (SLC), Atlantic; TAGOS Project Office; and Logistics Field Detachment (N44), Norfolk, Virginia (Employer) 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 53, American Federation of Government Employees (AFGE), AFL-CIO (Union).

After an investigation of the request for assistance, which arose during negotiations over a collective bargaining agreement (CBA) that, by mutual agreement, will govern conditions of employment of bargaining unit employees at four different Department of the Navy activities located in Norfolk, Virginia, the Panel directed the parties to submit their dispute to the undersigned for mediation-arbitration. The parties were informed that if a settlement were not reached during mediation, I would issue a binding decision to resolve the dispute. Accordingly, on February 1 and 2, 2012, a mediation-arbitration proceeding in Norfolk, Virginia, was conducted with representatives of the parties. Although voluntary settlements were reached on 16 out of 17 issues during the mediation portion of the proceeding, the parties were unable to agree on Article 16, Grievance Procedure, Section 9. Accordingly, I am required to issue a final decision resolving the parties' dispute. In reaching this decision, I have considered the entire record in this matter, including the parties' post-hearing submissions.

### BACKGROUND

The mission of MSFSC, which will have the largest number of unit employees under the CBA, is to crew, train, equip and maintain more than 40 government-owned/government-operated ships of the Military Sealift Command (MSC), the majority of which operate in MSC's Naval Fleet Auxiliary Force replenishing Navy ships at sea with fuel and supplies. In addition, MSFSC supports ships within the Special Mission Program (SMP) crewed by civil service mariners. The TAGOS Project Office, Norfolk, is part of the SMP, which has 26 ships that provide operating platforms and services for a wide variety of U.S. military and other U.S. government missions. SLC, Atlantic, part of MSC, Atlantic, operationally controls the ships, telling them where to go and when. The CBA will apply to approximately 290 MSFSC professional and non-professional unit employees, GS-5 through -13, who work in such shore-side positions as marine engineer, shipbuilding specialist, financial specialist, and supply management specialist; 3 employees in the TAGOS Project Office, Norfolk; 1 employee in MSC Code 44, Logistics Field Detachment; and 21 logistics management specialists, GS-11 through -13, in SLC Atlantic. All of the affected employees are represented by AFGE Local 53.

### ISSUE AT IMPASSE

The parties essentially disagree over whether failure on the part of an employee or the Union to meet the time limits prescribed in the parties' negotiated grievance procedure should move the grievance to the next level of the procedure or result in the termination of the grievance.

### POSITIONS OF THE PARTIES

#### 1. The Union's Position

The Union proposes the following wording in Article 16, Section 9:

Failure of the Employer to meet the time limits prescribed above shall permit the employee or the Union to move the grievance to the next step of the grievance procedure. Failure of the employee or the Union to meet the time limits prescribed above shall move the grievance to the next level. All time limits

in this Article may be extended by mutual consent.

Overall, the parties' CBA sets forth mutual obligations and responsibilities, and those "responsibilities should be a shared effort on all parties." According to the Union, its proposal should be adopted because "it seems only fair that if the employee or Union misses a time limit, the grievance is dropped and equally if the Agency misses it's time limit the grievance shall be conceded. Each party should bear the same consequences for missing time limits and take equal responsibility." Under the Employer's proposal, however, "the Union or employee will be the only party to sustain a los[s] in the event of missed time limits." In this regard, it is "the obligation of both the Union and Management to resolve issues" at the lowest level, and the failure of the Employer to meet its time limits could result in the Union being forced to go to arbitration without the benefit of lower level attempts to resolve the grievance. The Employer's proposal "is another way of how Management is trying to place responsibilities on the Union and employee and take no responsibilities on [its] part." Thus, the adoption of the Union's proposal would ensure fairness and that the CBA "works on both sides of the table (Union and Management) and [is] not one sided."

## 2. The Employer's Position

The Employer's counteroffer on Article 16, Section 9 is as follows:

Failure of the Employer to meet the time limits prescribed above shall permit the employee or the Union to move the grievance to the next step of the grievance procedure. Failure of the employee or the Union to meet the time limits prescribed above shall constitute withdrawal and termination of the grievance. All time limits in this Article may be extended by mutual consent.

Management's proposal is designed to address "the expeditious processing" of grievances, which "is one of the most important aspects of grievance settlement."<sup>1/</sup> If management, as the responding party, "fails to act within stated timeframes the

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<sup>1/</sup> *How Arbitration Works*, 5<sup>th</sup> edition, Elkouri and Elkouri, page 274.

moving party, grievant and/or Union, can advance the grievance to the next level." If, however, the moving party "fail[s] to meet stated timeframes the issue is withdrawn." Its approach is "fairly traditional" for resolving grievances and one which the Union has agreed to in seven out of the nine CBAs it has negotiated for its bargaining units in the Tidewater Virginia Area. The other two CBAs "are silent on what happens if an employee or the Union fails to meet its time limits," but also provide that if management fails to meet its time limits the grievance may be advanced to the next step. The Employer's proposal, therefore, "fits the pattern of the majority of the [Union]'s current agreements and would be the easiest for the [Union] to administer." With respect to the Union's proposal, "why would the responding party advance the grievance if the moving party failed to meet [its] time limits?" Logic dictates that "the responding party, normally management, would assume that the grievance is withdrawn if the grievant and/or Union, as the moving party, fails to act within time limits." In such circumstances, it would be reasonable to assume that the moving party has "lost interest in the issue raised in the grievance."

#### CONCLUSIONS

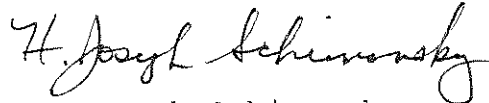
After carefully reviewing the parties' positions, I am not persuaded that the adoption of the Union's proposal is necessary to ensure fairness. Rather, in my view the Employer's proposal is both fair and more consistent with the underlying purpose of the negotiated grievance procedure. Among other things, the grievance procedure is an adversarial process permitting employees and the Union to challenge management actions that they believe violate the parties' CBA. If an employee or the Union fail to meet time limits, it is reasonable to assume that, as the moving parties, they have abandoned their attempt to challenge the action. Under the circumstances, it is appropriate that the matter should be considered closed. This is precisely what the Employer's proposal does.

The Union argues that, if its wording is not adopted, it could be forced to go to arbitration without the benefit of lower level attempts to resolve the grievance. Its proposal, however, does nothing to address that issue. Nor does the automatic elevation of a grievance to the next level if an employee or the Union fails to meet time limits appear to be a practice adopted in other Federal sector CBAs, including those of the Union. As the parties know, during mediation the

Employer proposed to grant employees automatic extensions of the time limits so they could advance a grievance to the next step, but the Union rejected the offer. This would have addressed situations where time limits were missed inadvertently. I am not inclined to impose that compromise now. Accordingly, I shall order the adoption of the Employer's proposal to resolve the parties' impasse.

DECISION

The parties' shall adopt the Employer's proposal.



H. Joseph Schimansky  
Arbitrator

February 13, 2012  
Washington, D.C.