

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON, D.C.

AND

VA NATIONAL COUNCIL, AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO

Case No. 93 FSIP 58

DECISION AND ORDER

The Federal Service Impasses Panel (Panel) issued a Panel Report and Recommendations for Settlement in this case on May 25, 1993. We recommended the following with respect to the two issues in dispute:

1. Limitations on the Use of Last Chance or Abeyance Agreements

The parties' agreement should incorporate, as binding provisions, the Office of Personnel Management (OPM) guidance on last chance and abeyance agreements as included in Appendix C to the revised MP-5, Part I, Chapter 752. In addition, the parties should adopt the following wording:

The Employer shall inform the employee of the right to consult private counsel, at his or her own expense, for advice with respect to the signing of such agreements. Employees shall be afforded a reasonable time for such consultation before signing. Such consultation shall not include participation by private counsel in meetings between the employee and the Employer, and shall in no way impinge on the Union's right of exclusive representation under the Statute.

2. Signing in the Presence of a Union Official

The parties should adopt the following wording:

Semi-annually, the designated Union official at each of the Department's facilities shall be provided with a summary of the use of last chance and abeyance agreements at that facility, including the number and type of

agreement and the nature of the proposed disciplinary charge that preceded the offering of such agreement. Names of the employees involved shall not be included. Acceptance of this information does not preclude the Union's request for any other information disclosable under 5 U.S.C. § 7114(b)(4).

The parties subsequently advised the Panel that they had conferred with each other but had been unable to reach a settlement of the issues in dispute. The Union accepted the Panel's recommendations; the Employer accepted the first part of the Panel's recommendation on the first issue incorporating OPM guidance on last chance and abeyance agreements into the parties' agreement as binding provisions. It urged the Panel, however, to reconsider the recommended wording regarding "consultation with private counsel and the extent to which private counsel can be involved in meetings between the employee and the Employer," and not make it part of the Panel's final order. In this regard, it states that the issue was never raised or discussed during negotiations, mediation, or proceedings before the Panel, and that the right of employees to representation is adequately protected because "the policy in these negotiations already requires that an employee be notified in writing" of the right to be represented by an attorney or other representative. Moreover, employees, in its view, "would continue to have a statutory right to be fully represented by their designated representative (an attorney or other representative)." Conversely, "the Panel's limitations on the involvement of the private counsel in employee-Employer meetings would interfere with an employee's statutory right." The Employer then goes on to suggest alternative wording which would address its concerns. With respect to the second issue, the Employer accepts the Panel's recommended wording "with the stipulation that the information will be provided upon request."

Having carefully considered the entire record in this case, including the responses of the parties to our recommendations for settlement, we conclude that the continuation of this dispute requires us to take final action. In this regard, we are persuaded by the Employer's argument concerning the first issue that our recommendation could, in certain contexts, interfere with an employee's statutory or regulatory right to be represented and accompanied by private counsel in meetings between the employee and the Employer.^{2/} Therefore, we shall eliminate such wording from our Order. As to the second issue, there is nothing in the parties' responses to convince us to modify the recommendation. Accordingly, in conformity with the Panel's regulations, 5 C.F.R. § 2471.11(a), we hereby issue the following Order.

^{2/} See, for example, 5 U.S.C. §§ 7114(a)(5)(A), 7503(b)(3), 7513(b)(3), and 29 C.F.R. § 1613.214 (b)(1).

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and in accordance with the findings set forth above, the Federal Service Impasses Panel hereby orders that:

1. Limitations on the Use of Last Chance or Abeyance Agreements


The parties' agreement shall incorporate, as binding provisions, the Office of Personnel Management (OPM) guidance on last chance and abeyance agreements as included in Appendix C to the revised MP-5, Part I, Chapter 752.

2. Signing in the Presence of a Union Official

The parties shall adopt the following wording:

Semi-annually, the designated Union official at each of the Department's facilities shall be provided with a summary of the use of last chance and abeyance agreements at that facility, including the number and type of agreement and the nature of the proposed disciplinary charge that preceded the offering of such agreement. Names of the employees involved shall not be included. Acceptance of this information does not preclude the Union's request for any other information disclosable under 5 U.S.C. § 7114(b)(4).

By direction of the Panel.


Linda A. Lafferty
Executive Director

August 11, 1993
Washington, D.C.