United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

DEPARTMENT OF DEFENSE DEFENSE CONTRACT AUDIT AGENCY CENTRAL REGION IRVING, TEXAS and LOCAL 3529, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case No. 91 FSIP 278

DECISION AND ORDER

The Department of Defense, Defense Contract Audit Agency, Central Region, Irving, Texas (Employer), filed a request for assistance with the Federal Service Impasses Panel to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and Local 3529, American Federation of Government Employees, AFL-CIO (Union).

After investigation of the request for assistance, the Panel directed the parties to meet informally with Staff Associate Gladys M. Hernandez for the purpose of resolving the impasse concerning official time for Union representatives, included in Article 5 of the successor agreement.[1/] The parties were advised that if no settlement were reached, Ms. Hernandez would report to the Panel on the status of the dispute, including the parties' final offers, and her recommendations for resolving the impasse. After considering this information, the Panel would take whatever action it deemed appropriate to resolve the impasse, including the issuance of a binding decision.

1/ The parties also accepted a Panel recommendation that they submit to private mediation-arbitration those sections of Article 5 related to Union representation as well as the other 11 contract articles in dispute, concerning, among other matters, overtime, compressed work schedules, and performance appraisals, following either a settlement or the issuance of a Panel decision on the official time article.

Ms. Hernandez met with the parties on March 17, 1992, at the Employer's offices in Irving, Texas, but the parties were unable to reach a settlement.[2/] She reported to the Panel based on the record developed by the parties, and it has considered the entire record in the case.

BACKGROUND AND PRELIMINARY MATTER

The Employer, 1 of 5 regional offices within the Defense Contract Audit Agency (DCAA), consists of 29 major field audit offices and 46 suboffices in 18 states. Its mission is to: (1) perform all contract audits for the Department of Defense; (2) provide advice on accounting and financial matters to assist in the negotiation, administration, and settlement of contracts and subcontracts; and (3) furnish contract audit service to other Federal agencies in accordance with OMB Circular A-73. The Union represents a bargaining unit of approximately 791 General Schedule employees, the majority (687) of whom are professional auditors; others are administrative personnel. Only the Union's 17 representatives (6 officers and 11 stewards as of March 26, 1992), however, would be affected by the outcome of this dispute. The parties' relationship is governed by the terms of the 1981 collective-bargaining agreement (CBA) between the Union and the DCAA Chicago Region, the Employer's predecessor[3/], until a successor is implemented.

2/ Because a number of proposals were discussed during the informal meeting, at the conclusion thereof, Ms. Hernandez asked the parties to take a few days and prepare their final proposals and then meet to exchange and discuss them on March 20, 1992, for one last time. In fact, from March 20 through 26, 1992, the parties met on five separate occasions and resolved all but three sections of Article 5, that is, sections 4, 6B., and 6C. On March 26, 1992, during a teleconference with Ms. Hernandez, the parties jointly requested and were granted until April 2, 1992, to submit their final proposals and summary statements of position on the three remaining disputed sections.

3/ In 1989, DCAA was reorganized into five regions, namely the Eastern, Northeastern, Mid-Atlantic, Central, and Western regions.

The official time dispute arose during the renegotiation of 12 articles in a successor agreement.[4/] Currently, how much official time and when it is used is at the sole discretion of the Union; the only accounting is the "monthly activity report" which the Union files with the Employer at the end of each month, the approval of which has become a mere formality.[5/]

On a preliminary matter, as noted above, only three sections in Article 5, of the successor agreement remain in dispute. One of the three (section 4), however, does not concern official time or procedures related to the use thereof, but rather, union representation. In its position statement, the Employer asks the Panel to resolve the parties' dispute over section 4. The Panel, however, did not determine to resolve any issues related to union representation, as the Union correctly points out in its statement. Rather, the Panel recommended to the parties that they submit such issues to a private mediator-arbitrator for resolution, which they agreed to do.[6/] Accordingly, we will not dispose of section 4 on the merits but leave it to the mediator-arbitrator to be selected by the parties to do so, should they not settle it between

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4/ The parties negotiated a new agreement in 1989; however, it was never executed because the DCAA was undergoing a reorganization at the time. It was not until mid-year 1991, after the DCAA's reorganization was completed and the Union was recertified as the exclusive representative of the bargaining unit, that the parties agreed to revisit 12 articles, 6 offered by each party, of the unexecuted 1989 agreement.

5/ The Employer allowed this practice to develop over time in the face of Article V, § 3, in the current CBA, which provides in relevant part that:

> A. Any Union representative shall be granted a reasonable amount of official time for all matters relating to the administration of this Agreement and joint labor-management relations matters arising under Title VII of the Civil Service Reform Act of 1978. ... C. ... the amount of official time to be authorized and the number of employees authorized to be on official time for representational activity should be determined by balancing the effective conduct of the Employer's business with the rights of bargaining unit employees.

6/ See supra note 1.

themselves with mediation assistance. Thus, two issues are appropriate for Panel consideration.

ISSUES

The parties disagree over the procedures for: (1) the allocation and use of official time; and (2) the Employer's notifying Union representatives of delays of their release from job duties to use official time.7/

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer's proposal reads as follows:

> SECTION 6: B. The amount of time the representative indicates [i]s needed will be mutually agreed upon in advance by the Employer and the Union representative on a case-by-case basis. The Employer will approve the request if the employee's absence from his principal duties does not have an adverse impact on time-sensitive work, such as those audits required to meet customer due dates or time phasing of discretionary audits. C. When the Employer delays the time a Union representative can engage in representational tasks, as outline[d] in B. above, the Employer will, upon request of the Union representative involved, reduce the denial to writing indicating the time the Union representative may be excused from work. Delays by the Employer to the Union representative's request will automatically extend the applicable time limits of this Agreement equal to the length of the delay.

Generally, section 6, the "centerpiece" of its proposed changes to the CBA, will correct the problems which management has experienced over the administration of official time in the recent past. In this regard, the proposal would bring back in check the Union representatives' use of official time, which was lost when supervisors, in effect, rubber-stamped their monthly activity reports either through "carelessness, inattention or naivete."

7/ Article 5, §§ 6B. and C., of the successor agreement, respectively.

Its proposed procedures are "fair and logical." In this regard, under section 6B., after conferring with the Union representatives over their requests for official time, supervisors would either approve their use of official time or postpone it but only if to do otherwise would "adversely impact time-sensitive work." Also, supervisors who delay a Union representative's use of official time would be required to document such delays upon request in accordance with section 6C. The release of Union representatives from their job duties to perform representational functions "is a major part of [] [its] supervisory training[,]" where it "emphasizes that managers and supervisors cannot deny [] [U]nion representative[s] the right to assist [] employee[s] in any matter affecting their employment; that when a representative requests the opportunity, he or she must be given the time sometime; if not when requested then a substitute time must be offered." Also, Union representatives would not be limited to the amount of official time the parties originally agreed would be sufficient to complete the representational tasks at hand. That is, they could request additional time if needed. Its proposal then "is not intended to keep the [U]nion [] from 'acting at all'" but rather, "to bring some semblance of reason into the program where the supervisor can have some say in balancing the effective conduct of the Employer's business with the rights of the Union to represent its interests and the interests of employees in the bargaining unit." Such balancing of interests has been recognized by the Federal Labor Relations Authority.[8/] "Section 7131(d) [of the Statute] does not mandate the 'granting' of official time under any and all circumstances[,]" as the Union maintains.[9/] Finally, by giving both parties the opportunity to protect their interests, the "creat[ion of] hostile relations" between them is averted by the Panel.

2. The Union's Position

The Union proposes the following wording:

> SECTION 6: B. Upon request to the supervisor by a Union representative, the necessary time for representational tasks will be granted to Union representatives unless the mission would be seriously impaired by work with

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8/ American Federation of Government Employees, AFL-CIO, Council of Locals No. 214 and Department of the Air Force, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 19 FLRA 215 (1985).

9/ Local 1770, American Federation of Government Employees, Fort Bragg, North Carolina and Department of the Army, Headquarters, XVIII Airborne Corps and Fort Bragg, North Carolina, 8 FLRA 242 (1982).

deadlines that cannot be met or extended. C. Delays by Management to Union requests will be in writing, signed by the supervisor with the rationale. Any delays will automatically extend the applicable time limits equal to the length of the delays.

Section 6B. of its proposal sets forth "a simple workable criteri[on]" for the Employer's delaying a Union representative's use of official time. The Employer's proposed section 6B., on the other hand, "is unworkable and unrealistic and would lead to unnecessary disputes that wastes tax funds." Also, it conflicts with Article 5, §§ 2 and 6A., over which the parties have reached agreement.[10/] In accordance with section 6A., it is Union representatives, not supervisors, who determine approximately how much time they will need to perform their representational duties. Moreover, the Employer's proposal adds yet another precondition for approval of a Union representative's request for official time, which is that the representative's "absence from his[or her] principal duties [] not have an adverse impact on time-sensitive work[.]" This absence-of-adverse-impact requirement is "vague and conflicts with [s]ection 1[,] of the official time article," which the parties have agreed to.[11/] Section 6C. of the Employer's proposal is unacceptable, because it does not require the Employer to disclose its reasons in writing for delaying a Union representative's use of official time, and it is not apparent to the Union why it should not have to do so.

CONCLUSIONS

After evaluating the evidence and arguments presented, we shall adopt a compromise position based on both parties' proposals. With regard to the procedure for allocating official time to Union representatives, section 6B., we are persuaded that the Employer's proposed procedure strikes a better balance between the competing interests in this case. That procedure, in contrast to the

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10/ Section 2 defines a reasonable amount of official time as "the necessary time to accomplish the representational tasks." Section 6A. requires Union representatives to provide their supervisors with advance notice of the (a) nature of the representational task and (b) estimated amount of time necessary to complete any such task.

11/ Section 1 provides that "the Union will be allowed to use a reasonable amount of official time to serve in a representational capacity on behalf of employees in the bargaining unit."

Union's, would give both parties, who have equally important mandates, a say in determining the amount of time necessary for Union representatives to accomplish any specific representational task, but without denying them the actual amount of time that proves to be necessary. We believe, therefore, that requiring Union representatives to meet and agree with their supervisors over their use of official time should provide some assurance that both the Union's representational and the Employer's operational needs are accommodated. Moreover, we find it acceptable that the Employer be allowed to delay Union representatives' use of official time in favor of time-sensitive workload requirements, provided there is a corresponding extension of applicable contractual time limits for taking appropriate actions. In our view, such limited delay authority is appropriately responsive to the Employer's concern that employees complete audits within prescribed time frames, while it allows the Union representatives to continue to perform their representational duties in a timely and effective manner. Finally, turning to the issue of notice of delay of use of official time, section 6C., we note that neither party adequately argued their respective positions with respect to this issue. We believe, however, that it is appropriate to require supervisors to disclose their reasons for delaying a Union representative's use of official time, in writing, as a matter of course given that we are ordering a change in the status quo by permitting such delays, although within strict limitations. By adopting this portion of the Union's proposal, supervisors should be deterred from arbitrarily delaying a Union representative's use of official time, and the enforcement of the procedure for use of official time discussed above should be facilitated.

ORDER

Pursuant to the authority vested in it by § 7119 of the Federal Service Labor-Management Relations Statute and because of the failure of the parties to resolve their dispute during the course of the proceedings instituted under 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 following:

The parties shall adopt the following compromise wording:

> SECTION 6: B. The amount of time the Union representative indicates is needed will be mutually agreed upon in advance by the Employer and the Union representative on a case-by-case basis. The Employer will approve the request if the employee's absence from his or her principal duties does not have an adverse impact on time-sensitive work, such as those audits required to meet customer due dates or time phasing of discretionary audits. C. Delays by management to Union

requests for use of official time will be in writing, signed by the supervisor with the rationale. Any delays will automatically extend the applicable time limits equal to the length of the delays.

By direction of the Panel.

Linda A. Lafferty
Executive Director

August 5, 1992
Washington, D.C.