

United States of America
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

DEPARTMENT OF DEFENSE)
DEFENSE CONTRACT AUDIT AGENCY)
NORTHEAST REGION)
LEXINGTON, MASSACHUSETTS)

and)

DCAA COUNCIL OF LOCALS NO. 163,)
AMERICAN FEDERATION OF)
GOVERNMENT EMPLOYEES, AFL-CIO)

Case No. 92 FSIP 83

DECISION AND ORDER

The Department of Defense, Defense Contract Audit Agency, Northeast Region, Lexington, Massachusetts (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 the DCAA Council of Locals No. 163, American Federation of Government Employees, AFL-CIO (Union).

After investigation of the request for assistance, the Panel directed the parties to have a telephone conference with Staff Associate Gladys M. Hernandez for the purpose of resolving the dispute concerning the definition of competitive areas^{1/} for reduction-in-force (RIF) purposes. 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 issue. After considering this information, the Panel would take whatever action it deemed appropriate to resolve the impasse, including the issuance of a binding decision.

Ms. Hernandez held a telephone conference with the parties on April 29, 1992, but the parties were unable to reach a settlement. She has reported to the Panel based on the record developed by the parties, and it has considered the entire record in the case.

^{1/} Competitive areas are the geographical and organizational boundaries within which employees compete for job retention under a RIF.

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BACKGROUND

The Employer, 1 of 5 regional offices within the Defense Contract Audit Agency (DCAA), consists of 25 major field audit offices and 44 suboffices in 9 states. It is responsible for (1) performing audits for the Department of Defense (DOD), as well as other Federal agencies under OMB Circular A-73; and (2) providing DOD with accounting and financial advisory service to assist in the negotiations, administration, and settlement of contracts and subcontracts. The Union represents a bargaining unit of approximately 746 General Schedule employees, the majority (676) of whom are professional auditors; others are administrative and clerical personnel. The parties' relationship is governed by the terms of a regional collective-bargaining agreement which is due to expire in April 1993.

The dispute over the definition of competitive areas arose during renegotiations which were entered into pursuant to the January 22, 1992, settlement of a Union-filed unfair labor practice charge. Therein, the parties also agreed that the negotiated definition would apply to prospective RIFs only. The current competitive areas, which were unilaterally established by the Employer, are coextensive with commuting areas. Approximately 268 employees represented by the Union would be affected by the outcome of the dispute, of which 12 (10 nonsupervisory auditors and 2 support personnel) are employed at the Bath Iron Works Suboffice (BIW) of the Burlington Branch field audit office in the Bath, Maine, commuting area^{2/}, and 256 at any 1 of 17 field audit offices and suboffices in the Boston, Massachusetts, commuting area.^{3/}

ISSUE AT IMPASSE

Whether the Bath, Maine, commuting area (Area 43), which includes only BIW and the Maine Mobile Suboffice of the Burlington Branch Office, should remain a separate competitive area or be included in the Boston, Massachusetts, competitive area for RIF purposes.

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- 2/ The Employer indicates that there are also two supervisors stationed in Bath.
- 3/ The Employer indicates, without dispute from the Union, that the field audit offices and suboffices in the Boston commuting area are within 52 miles of each other. BIW, on the other hand, is "approximately 130 miles from the next closest field audit office."

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POSITIONS OF THE PARTIES1. The Employer's Position

The Employer proposes that competitive areas for RIF purposes continue to be defined in terms of commuting areas such that Bath, Maine, and Boston, Massachusetts, remain separate competitive areas. Because of diminishing workload and finances and the wide geographic dispersion of its offices, its proposed definition would offer it more cost benefits and greater flexibility to both parties as well. Also, it is "consistent with Office of Personnel Management's [] regulations which state that competitive areas for RIF purposes should be the same as the commuting area for all grade levels."^{4/} In this regard, the competitive area for RIF purposes for the employees at the GM-13 and above grade levels is the same as the commuting area and, therefore, the same should be true for all bargaining-unit employees.

The Bath, Maine, employees are the most senior in the region. Consequently, under the Union's proposal, it would have to RIF employees in Boston for a workload reduction at Bath. This, in turn, would necessitate the relocation of Bath employees to the Boston area to correct the staffing imbalances between the two locations at a substantial cost.^{5/} If a RIF needs to be conducted because of reduced agency finances as well as workload, the added relocation expenditures would require it to RIF more employees than it originally intended, which would be "disruptive to the continuity of [a]gency operations." Clearly then, while the Union's proposal gives "complete deference to seniority at the expense of efficient and cost effective operations," its proposal "balance[s] the rights of senior employees with sound management principles to continue operations in an efficient and effective manner."

Also, Bath employees, specifically auditors, would not necessarily benefit from an expanded competitive area such as that proposed by the Union. In fact, the opposite may be true. In this regard, because they work under mobility agreements, if they refuse to relocate to the Boston area to correct RIF-related staffing imbalance, they would be dismissed. A dismissal, would not entitle

^{4/} 5 C.F.R. § 351.402(b) (1991).

^{5/} The Employer estimates that, based on the last 4 permanent-change-of-station (PCS) moves it conducted, they cost an average of \$80,300 per employee with a home and 4 dependents, including 60 days temporary quarters and usage of relocation service. It also equates this cost figure to "3.3 times the annual GS-7, step 1, salary, 2.8 times the annual GS-9, step 1, salary, and 2.5 times the annual GS-11, step 2, salary."

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them to severance pay, discontinued service retirement, and participation in the Department of Defense Priority Placement Program. RIFed employees, on the other hand, would be entitled to those benefits. Moreover, it would be unable to offer Bath employees early retirement in lieu of RIFs because before OPM would grant such authority, it would require that 5 percent of employees within a competitive area be subject to separation by RIF. Bath would not meet the 5 percent criterion if combined with Boston, but would if it continues to remain separate.

No comparison should be made between the competitive area for RIFs and the area of consideration for promotions because "[t]he impact is significantly different." Moreover, though the area of consideration for promotion to GM-13 (supervisory) auditor positions is regionwide, in practice employees do not apply for such promotions outside their commuting areas.

Finally, recent history indicates that, budget permitting, Bath employees would be afforded an opportunity to relocate to another DCAA office before a reduced-workload-related RIF is implemented.^{6/} Should a RIF be necessary, however, the availability of such benefits as severance pay, unemployment compensation, discontinued service retirement, and DOD priority placement would lessen its adverse impact.

2. The Union's Position

The Union proposes the following:

The competitive areas for reduction-in-force [] purposes shall be the commuting areas as determined unilaterally by the Region prior to the commencement of bargaining in February 1991, with the exception of the Bath, Maine, office (Area 43) which shall be combined with the Boston, Massachusetts, commuting area (Area 40). [Emphasis added.]

Bath auditors are aware of the "implications" of expanding the competitive area to include Boston and, nonetheless, want such expansion because, in a RIF situation, they would be able to compete for job retention with the hundreds of Boston area employees, rather than just among themselves.

^{6/} In FY 1992, with Congressional supplemental funding, it offered employees in three overstuffed competitive areas -- Detroit, Michigan; Buffalo, New York; and Hartford, Connecticut -- temporary duty assignments at DCAA offices in other areas of the country, rather than conduct a RIF.

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The Employer's "only real argument" against the adoption of the Union's proposal revolves around the cost it would incur in having to relocate Bath auditors. Its proposal, "at the absolute maximum, if the entire Bath office were closed, would require the Region to relocate 9 of its 1,042 employees." The relocation costs, therefore, would not be prohibitive. Nonetheless, it is as valid for the Employer to incur such costs to protect the jobs of senior employees as it is to rotate managers under the mandatory rotation policy. But the Employer seeks "never [to] be required to pay for PCS moves caused by downsizing of the workforce."

Since the Employer failed to disclose the data supporting its claim that the average relocation move costs \$80,300, it is "highly suspect." That cost figure is probably "based on the cost of moving managers [under the mandatory rotation policy] ... [and] the new Regional Director and his large family from California." Moving a senior auditor approximately 130 miles from Bath to Boston would not be that costly. The Employer's argument that "it must operate on a zero-sum basis," that is, that it would have to dismiss 2.5 GS-11s or 2.8 GS-7s to pay for each \$80,300 relocation, should not be accepted as a "serious" one because it would require the "dissolution of the entire Agency if a single employee is RIFed." Moreover, the Employer has somehow managed to pay for management rotation- and promotion-related moves without having to RIF employees to do so.

RIF-related dismissals also have costs associated therewith, for example, severance pay and the relocation of employees who accept positions under the DOD Priority Placement Program. The Employer has not proved that the RIF-related relocations of Bath auditors would cost more than dismissing them. But even if the cost were greater, "it [would] not be so onerous as to create a compelling need not to incur the cost."

CONCLUSIONS

Having considered the evidence and arguments presented on the disputed issue, we find that the Union's proposal should be adopted because it would protect the jobs of senior Bath employees over those of the junior Boston area employees. It is consistent with the general labor principle that senior employees should be retained during periods of reduced operations. The Employer has failed to persuade us that we should not adhere to this approach. The Employer makes cost the principal determinant in seeking to continue to define competitive and commuting areas as the same. It offers no empirical evidence, however, in support of the projected cost of relocating each of, at most, 14 employees, including supervisors, the approximately 130 miles from Bath to Boston. Neither does it provide cost comparisons between RIFing senior Bath employees, including, e.g., severance pay and unemployment compensation, and relocating them to the Boston area. Although it does offer a figure as to the average cost of previous PCS moves,

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it failed to explain: (1) whether those moves involved long or short distances, such as from Bath to Boston and (2) how much of the average cost involved legally unavoidable expenses, if any. Also, it failed to submit evidence indicating that whatever costs are incurred would not be offset by benefits in retaining the more experienced senior employees. But even assuming that the costs and administrative burden to the Employer of expanding the Bath competitive area beyond the commuting area would be slightly more than keeping them coextensive, in our view, that is outweighed by the greater number of job retention opportunities which would be created for the more senior employees. Finally, we believe it would be fundamentally unfair to deny the more senior Bath auditors the opportunity to relocate under a RIF situation in order to save their jobs when, at any other time, they may be required to relocate at the Employer's will or lose their jobs because they serve under mobility agreements.

ORDER

Pursuant to the authority vested in it under 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 under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 24711.11(a) of its regulations hereby orders the following:

The parties shall adopt the Union's proposal.

By direction of the Panel.



Linda A. Lafferty
Executive Director

August 12, 1992
Washington, D.C.