United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

and

LOCAL 2211, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 91 FSIP 205

DECISION AND ORDER

Local 2211, American Federation of Government Employees, AFL-CIO (Union) 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 the United States International Trade Commission, Washington, D.C. (Employer).

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 five midterm-bargaining issues at impasse.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/ These issues concerned: (1) official time for Union representatives to (a) perform representational duties and (b) attend labor-management training; (2) performance awards; (3) temporary promotions; and (4) indoor air quality standards.

Ms. Hernandez met with the parties on November 12, 1991, at the Panel's offices in Washington, D.C. With her assistance, the parties resolved all but the indoor air quality standards issue.2/ She has reported to the Panel based on the record developed by the parties. The Panel now has considered the entire record in the case.

BACKGROUND

The Employer administers and enforces the international trade laws of the United States, and conducts investigations and studies for administrative and legislative officials. The bargaining unit consists of approximately 350 General Schedule employees who work primarily as attorneys, economists, international trade analysts, secretaries, and clerks. They are covered by a collective-bargaining agreement (CBA) which was due to expire in March 1992, but remains in effect until a successor is implemented.

The dispute over indoor air quality standards for the Employer's headquarters facility3/ arose during Union-initiated midterm bargaining pursuant to Article XXIV, § 3, of the CBA. All employees stationed there would be affected by the outcome of this dispute.

ISSUE

The dispute centers on: (1) whether Article XV, § 4, of the CBA should be modified to provide for a ventilation rate of 10 cubic feet per minute (CFM) of outside air per person, the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standard when the building was constructed,4/ rather than

---

2/ Both parties submitted their final proposals and position statements on this issue on November 29, 1991, pursuant to Ms. Hernandez's instructions at the conclusion of their meeting.

3/ This facility is located at 500 E Street, SW., Washington, D.C.; the Employer leases 7 of 10 floors from its owner and manager, Boston Properties. The Union describes it as having sealed windows and a single heating, ventilation, and air conditioning (HVAC) system.

4/ American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., ASHRAE Standard 62-1981, Ventilation for Acceptable Indoor Air Quality (1981).

the Federal rate,[5/] in all work areas; and (2) whether a study should be conducted to determine the cost of retrofitting the facility's HVAC system to raise the ventilation rate to 20 CFM, the current ASHRAE standard.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer proposes that the first paragraph of Article XV, § 4, of the CBA, which is the only disputed segment, remain unchanged;[6/] therefore, the Union should withdraw its proposal. The status quo should be maintained because: (1) the CBA already requires it to investigate and abate unhealthful conditions;[7/] (2) annual scientific testing of the facility's air quality,[8/] including the most recent tests conducted in April 1991,[9/] have confirmed that the quality of the indoor air is acceptable as

---

5/ Under General Services Administration (GSA) regulation, 41 C.F.R. § 101-20.107(e) (1991), the minimum ventilation required to be provided in Federally-controlled buildings during working hours is 5 CFM per person.

6/ That paragraph reads as follows:

> In accordance with **applicable Federal standards** management will **provide and maintain adequate ventilation**, personal security, heating and cooling in all work areas, and provide potable drinking water free of harmful level[s] of contaminants in accessible locations for all employees. [Emphasis added.]

7/ Article XV, § 4, paragraph 3, of the CBA.

8/ Annual testing of the HVAC system, ambient air, and drinking water by a GSA-scheduled contractor is required under Article XV, § 4, paragraph 2, of the CBA.

9/ These tests were conducted by Applied Environmental, Inc. (AE) under contract with the Employer. The Employer submitted a copy of AE's report discussing its findings and recommendations dated June 1991.

currently defined by ASHRAE;[10] (3) the facility meets the ASHRAE ventilation rate and D.C. Code requirement of 10 CFM which was in effect in 1987 when it was constructed; and (4) the Union has failed to "articulate the conditions which prompt[ed] [its] demand for change," after being repeatedly asked to do so. In fact, the air quality at the facility has not been the subject of any (1) grievance, (2) Labor-Management Safety and Health Committee meeting, or (3) Union-Management meeting. Also, "complaints have been virtually nonexistent, with the exception of some which surfaced and were addressed after occupancy of the building which concerned air 'stuffiness' in one area of the building." In this regard, the "employee opinion survey" unilaterally conducted by the Union following the meeting with the Panel's representative is of "questionable relevance." Since no problems have been identified through testing or employee complaints, it should not be required to expend $5,000, at a minimum, to study the cost of retrofitting the building to raise the ventilation rate from 10 to 20 CFM, which may exceed $1,000,000 according to the building owner and manager, Boston Properties. Such study would be an "irresponsible" expenditure of Government funds.

"It does in effect meet the direct, empirical method for achieving acceptable air quality, as defined in [the ASHRAE] standard." This method is the "indoor air quality procedure," which provides that "[a]cceptable air quality is to be achieved within the space by controlling known and specifiable contaminants."[11] In this regard, "[] [3] years of annual testing has revealed [that] the ITC [headquarters facility] has never had harmful concentrations of the contaminants identified for specific control by ASHRAE or applicable Federal Standards." For example, "carbon dioxide[,] ... on which the [U]nion has frequently focused attention, ... remains well below the 1,000 ppm level specified."[12] The Union's challenge to prior "testing methods, procedures, locations, or results" are not "credible." In fact, on the one hand, it complains about the testing locations while, on

---

10/ Under section 3, of American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., ASHRAE Standard 62-1989, Ventilation for Acceptable Indoor Air Quality (1989), acceptable indoor air quality is defined as:

> [A]ir in which there are no known contaminants at harmful concentrations as determined by cognizant authorities and with which a substantial majority (80% or more) of the people exposed do not express dissatisfaction.

11/ ASHRAE Standard 62-1989, sections 4.2 and 6.1.

12/ ASHRAE Standard 62-1989, Table 3.

the other, it declines management's formal invitations to participate in selecting them. Moreover, management has taken follow-up action on recommendations set forth in, for example, the report issued following the April 1991 indoor air quality tests of the facility. Clearly then, it has a "demonstrated and continuing commitment to ensure adequate ventilation free of harmful contaminants[.]"

2. <u>The Union's Position</u>

The Union proposes to replace the first paragraph of Article XV, § 4, of the CBA, with the following:

> The [E]mployer will maintain adequate ventilation, heating, and cooling in all work locations. The Employer will [e]nsure that ventilation in all work areas of the agency will meet the standard of 10 CFM (cubic feet per minute) of outside air per person. The agency will request a study by an appropriate GSA-schedule[d] contractor of the cost of boosting the ventilation rate from 10 CFM to 20 CFM [of outside air per employee,] which is the contemporary ASHRAE ... standard[.] The study will also provide actual measurement of [the] CFM of outside air using scientific measurement of carbon dioxide and other measures in work areas throughout the ITC building. This study will be completed within 120 days (4 months) after the final decision of the FSIP, and then forwarded to the Union. This contractor must be certified to measure air flow and ventilation by a recognized trade association such as the National Environmental Air Balance Bureau or equivalent. The Union may request a resumption of bargaining over this section within 90 days of receipt of the completed study.

In effect, its proposal simply maintains the <u>status quo</u> because the Employer already claims to meet the 10 CFM ventilation standard, which was both the ASHRAE recommended standard and D.C. Building Code requirement when the facility was certified for occupancy. Moreover, the proposed higher ventilation rate is appropriate because current studies reveal "that poor indoor air can adversely affect employee health and productivity."[13/] Also, it would specify what is meant by the phrase "adequate ventilation" included in both parties' proposals, which should facilitate resolution of disputes over the matter.

<u>13</u>/ Office of Air and Radiation, U.S. Environmental Protection Agency, Indoor Air Facts No. 3, Ventilation and Air Quality in Offices (1990).

The current minimum standard for Federal facilities, 5 CFM, proposed to be maintain by the Employer under the contract, is outdated. In this regard, it was established by GSA in the early 1970s based upon the ASHRAE standard, but since then ASHRAE has increased its minimum standard first to 10 and most recently to 20 CFM.

The method used by the industrial hygienists retained by the Employer to conduct the annual tests of, among other things, "the ambient air," as required under Article XV, § 4, of the CBA is "scientifically unsound" and, therefore, the results are suspect. In this regard, the industrial hygienists asked the owner of the facility to indicate the ventilation rate rather than measuring it themselves using appropriate instruments.14/ Even under this "lax method" for testing the ventilation rate, however, some areas of the facility have in the past tested below 5 CFM.15/ Moreover, since 1989, employees have registered complaints with the Union concerning the quality of the indoor air. Also, a recent survey of employees which it conducted revealed that they remain concerned over the poor air quality and how it may be adversely affecting their health. Finally, having a study conducted to determine the cost of raising the ventilation rate to 20 CFM is "prudent" given the owner's $1,000,000 estimated cost of doing so. "With such a detailed feasibility study, the [parties] would then be prepared to consider the practical aspects of upgrading the ventilation system."

CONCLUSIONS

Having considered the evidence and arguments presented on the disputed issue, we shall order the Union to withdraw its proposal because it did not demonstrate: (a) a need to change the current contract provision to provide for a ventilation rate of 10 CFM, or (b) that the quality of the indoor air is such that a study to determine the cost of retrofitting the building to raise the ventilation rate to 20 CFM is called for. In this regard, while the Union indicates that employees are concerned over the indoor air quality, we note that it did not present any documentary evidence: (1) that alleged individual employee complaints over

---

14/ The Union argues this point without support.

15/ In support of this position, the Union submitted: (a) a letter from an industrial hygienist, dated August 1, 1989, reporting his findings following an indoor air quality survey of then-designated smoking areas, including ventilation measurement results; and (b) a letter from an industrial hygienist, dated May 3, 1989, reporting his findings following an indoor air quality survey of Room 412, Office of Data Systems.

specific indoor air quality problems were ever documented and presented to the Employer for review and appropriate abatement action under the existing abatement procedure provided for in Article XV, § 4, paragraph 3, of the CBA, or (2) that grievances were filed claiming that the Employer failed to abate any air quality problems brought to its attention. In fact, the only documented evidence of specific indoor air quality problems submitted by the Union concerned Suite 412, and dates back to 1989; however, that same evidence also indicates that the problem was abated once the Employer was made aware of it. The August 1989 report on the air quality tests performed in smoking areas, indicating ventilation rates of less than 10 CFM, in our view, is outdated because it precedes the implementation of the limited ndoor-smoking policy imposed by the Panel in November 1990.[16/]

The most recent annual indoor air quality tests present more reliable and persuasive evidence. These were conducted in April 1991 by a certified industrial hygienist of AE[17/], and not only found that the selected test areas conform with established Occupational Safety and Health Administration (OSHA) air contamination standards and meet or exceed a ventilation rate of 10 CFM, but revealed that they are devoid of harmful concentrations of indoor contaminants identified for control by ASHRAE. Also, the record indicates that the Employer followed up on the AE's recommendations to reduce the risk for future indoor air quality problems which were set forth in its assessment report on the 1991 tests. Thus, we are persuaded that, through annual testing of the indoor air and assessment of the findings provided for by contract, management has maintained acceptable air quality as defined by OSHA as well as ASHRAE and should successfully continue to do so in the future. Finally, any problems which may arise should be resolved through the contract abatement procedure.

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

---

16/ Under this policy, smoking is (1) permitted in those restrooms designated for smoking at the time, and (2) prohibited in (a) areas where bargaining-unit employees "may be assigned or sent as part of their duties," and (b) any other areas where air quality studies show it is hazardous to the health of bargaining-unit employees. United States International Trade Commission, Washington, D.C. and Local 2211, American Federation of Government Employees, AFL-CIO, Case No. 90 FSIP 81 (November 20, 1990), Panel Release No. 302.

17/ *See supra* note 9.

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 Union shall withdraw its proposal.

By direction of the Panel.

Linda A. Lafferty
Executive Director

July 17, 1992
Washington, D.C.