

United States of America  
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

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 In the Matter of )  
 )  
 DEPARTMENT OF HEALTH AND )  
 HUMAN SERVICES )  
 SOCIAL SECURITY ADMINISTRATION )  
 EVANSVILLE DISTRICT OFFICE )  
 EVANSVILLE, INDIANA AND )  
 )  
 and )  
 )  
 DEPARTMENT OF HEALTH AND )  
 HUMAN SERVICES )  
 SOCIAL SECURITY ADMINISTRATION )  
 CLEVELAND TELESERVICE CENTER )  
 LAKEWOOD, OHIO )  
 )  
 and )  
 )  
 LOCAL 3448, AMERICAN FEDERATION )  
 OF GOVERNMENT EMPLOYEES, AFL-CIO )  
 \_\_\_\_\_ )

Case Nos. 91 FSIP 9  
91 FSIP 18

DECISION AND ORDER

Local 3448, American Federation of Government Employees, AFL-CIO (Union), filed two requests for assistance with the Federal Service Impasses Panel (Panel) in Case Nos. 91 FSIP 9 and 91 FSIP 18, to consider negotiation impasses under section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of Health and Human Services, Social Security Administration, Evansville District Office, Evansville, Indiana and the Cleveland Teleservice Center, Lakewood, Ohio (Employer), respectively.

After investigation of the requests for assistance concerning parking, the Panel determined that the cases should be consolidated and resolved on the basis of written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the dispute. The Employer's submissions have not been considered by the Panel in

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resolving the issues at impasse.<sup>1/</sup>

1/ Pursuant to the Panel's procedural determination rendered pursuant to section 2471.6(a)(2) of its rules and regulations, the parties were directed to exchange their written positions and, if any, rebuttal statements on February 19 and March 5, 1991, respectively; subsequently, the parties agreed to extend those dates to March 12 and 26, respectively. While the Union's initial statement of position with supporting argument and evidence was timely submitted, the Employer's position was not mailed to the Union until March 22, 1991, some 10 days late. Prior to receipt of the Employer's statement of position, the Union sent a letter to the Panel on March 22, 1991, addressing its concern that the Employer "has flagrantly ignored the deadlines, as set by the Panel and agreed to by the parties" and urged the Panel not to consider the submission. A Panel representative, thereafter, held a telephone conference with the parties on April 4, 1991, in an attempt to resolve the matter concerning the parties' submissions. Although the Employer's submission eventually was received by the Union, when this matter was discussed with the parties during the teleconference, the Union maintained that it had been unduly prejudiced because the Employer had the advantage of assessing the Union's brief for more than a week prior to submitting its position. Moreover, the Union contended that these actions prevented it from preparing a timely rebuttal.

The parties were informed by the Panel representative that inasmuch as the Employer, by belatedly submitting its initial statement of position, had garnered not only the opportunity to put forth its position but also to evaluate and rebut that of the Union's timely submission, that the Union alone should be afforded the opportunity to submit to the Panel by close of business April 11, 1991, a rebuttal to the Employer's statement of position. The Union did so, submitting its rebuttal on April 10, 1991. The Employer, however, disregarded this solution and also submitted a rebuttal statement on April 9, 1991. Accordingly, due to the Employer's disregard of the procedures concerning the filing of written statements of position, the Panel has not considered either of the Employer's submissions in rendering its decision.

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BACKGROUND

The mission of the Evansville District office is to provide the public with information, process applications, and determine eligibility for Social Security benefits; the Cleveland Teleservice Center responds only to telephonic inquiries concerning benefits. The Union represents approximately 89 General Schedule employees in the 2 offices who are part of a nationwide consolidated bargaining unit consisting of approximately 48,000. Employees affected by this dispute work as claims representatives, service representatives, teleservice representatives, data review technicians, development clerks, and secretaries. The parties are covered by a master collective-bargaining agreement between the Social Security Administration (SSA) and the American Federation of Government Employees which is in effect until January 1993.

The dispute arose during impact-and-implementation bargaining over parking stemming from the Employer's relocation of the Evansville District Office in May 1988, and the Cleveland Teleservice Center in January 1988. During negotiations, the Union proposed that employees at both facilities be provided with free or low-cost parking and reimbursed for parking fees paid retroactive to the relocation. In both instances, the Employer alleged that it did not have a duty to bargain. Subsequently, the Union filed grievances which were consolidated and submitted to arbitration. The arbitrator concluded that while the Employer had no contractual obligation to bargain over cost-free parking for bargaining-unit employees, it was required to negotiate over all other aspects concerning parking arrangements at the relocated offices.

Following the arbitrator's decision dated July 26, 1990, the parties resumed negotiations. They executed memoranda of understanding (MOUs) on all but two issues, agreeing, among other matters, that the Employer would request the General Services Administration (GSA) to provide funds for employee parking.<sup>2/</sup> Should this approach be unsuccessful, the Employer agreed to request GSA's permission to authorize SSA to fund the

<sup>2/</sup> The MOUs concerning the relocation of the Evansville, Indiana, and Lakewood, Ohio, facilities were signed on September 20 and 27, 1990, respectively.

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parking, provided the appropriate SSA authorities approved the expenditure. If GSA and SSA approval was not forthcoming, the Employer would pursue other alternatives to provide low-cost parking. Although the MOUs provide that their terms are to become effective upon signature of the parties, the Employer, for the most part, has not taken the steps required of it under the agreements.

#### ISSUES AT IMPASSE

The parties continue to disagree over whether the Employer should: (1) provide bargaining-unit employees with subsidized parking; and (2) retroactively reimburse employees for parking expenses incurred since the relocations.

#### I. Subsidized Parking

##### a. The Employer's Position <sup>3/</sup>

The Employer opposes any subsidy for employees to help them defray parking expenses. Rather, employees who drive to work should bear the cost of parking since that is the common practice among Federal Government workers. The Employer contends that not only is its position consistent with what the Panel ordered in a prior decision,<sup>4/</sup> but it also would encourage employees to resort to public transportation, thereby helping to reduce traffic congestion and air pollution. With respect to the Evansville District Office, parking prices in the area are reasonable and do not present a financial hardship for employees. Another alternative for employees is a city parking lot 7 blocks away that is free to the public with access to a trolley that runs every 20 minutes for 10 cents a ride. At the Cleveland Teleservice Center, employees have been successful in finding free parking within a 1/2-mile radius of the office. Furthermore, the Employer would be willing to relax

<sup>3/</sup> This summary of the Employer's position was taken from information provided to the Panel during its initial investigation of the requests for assistance, prior to the Panel's assertion of jurisdiction.

<sup>4/</sup> Department of Health and Human Services, Social Security Administration, San Diego District Office and San Diego Teleservice Center, San Diego, California and Local 2879, American Federation of Government Employees, AFL-CIO, Case No. 89 FSIP 46 (May 24, 1989), Panel Release No. 281.

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its tardiness policy there to accommodate employees who have to park far from the office to find a free space.

b. The Union's Position

The Union proposes that the cost to employees for parking not exceed \$1 per month. In its view, only a nominal fee should be charged since employees were accustomed to free parking at the former locations. According to the Union, as a result of the relocations, employees now must pay between \$25 and \$45 per month. Based on their average income levels, an unreasonable percentage of their pay goes towards parking expenses. Adopting the Union's proposal would restore parity between employees at the Evansville and Lakewood facilities and those in similar SSA offices who have the benefit of free parking. While it acknowledges that SSA employees in some other offices pay for parking, they have been doing so for an extended period of time. Moreover, most of those offices are in congested metropolitan areas where employees have become accustomed to using public transportation. The Union notes that while there is a free public parking lot near the Evansville facility which has a trolley available, using it would add 30 minutes to the commute.

According to the Union, its proposal does not represent a commuting expense which has been determined by the Federal Labor Relations Authority (Authority) to be a nonnegotiable subject of bargaining.<sup>5/</sup> In this regard, the Union contends that its proposal is distinguishable since it seeks only low-cost parking and not commuting expenses for employees.<sup>6/</sup> Moreover, the relocation to areas where only limited free parking is available represents a change which has more than a minimal impact on employee working conditions. Finally, it

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<sup>5/</sup> National Treasury Employees Union and Family Support Administration, Department of Health and Human Services, 30 FLRA 677 (Proposal 1) (1987).

<sup>6/</sup> United States Department of the Treasury, Internal Revenue Service, and United States Department of the Treasury, Internal Revenue Service, Houston District and National Treasury Employees Union and National Treasury Employees Union, Chapter 222, 25 FLRA 843, 847-848 (1987); vacated as to remedy only, National Treasury Employees Union v. Federal Labor Relations Authority, 856 F.2d 293 (D.C. Cir. 1988).

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maintains that should employee parking be subsidized, the benefits to employee morale would outweigh the associated costs to the Employer.

#### CONCLUSIONS

We conclude that the dispute over a parking subsidy should be resolved on the basis of compromise wording which would encourage both parties to seek a parking rate most beneficial to employees. In this regard, the Union should advise the Employer of the number of employees interested in obtaining a group parking rate at nearby parking facilities. Once this is accomplished, both parties should survey group rates at parking facilities convenient to the offices. Following the survey, the parties should meet to determine with which, of the facilities surveyed, the Employer should negotiate to secure a group rate on behalf of employees. In order to ensure that the process is not unduly prolonged, these measures are to be completed within 30 days of implementation of the Panel's decision. In our view, it is appropriate for the Employer to take some affirmative action which has the potential to benefit employees who have been disadvantaged by these relocations, particularly since the Employer initiated the changes in working conditions which resulted in a loss of free parking to employees.

#### II. Retroactive Adjustment For Parking Expenses Incurred Since Relocations

##### a. The Employer's Position <sup>2/</sup>

The Employer opposes retroactive reimbursement to employees for parking expenses incurred following the relocation of the Evansville, Indiana, and Lakewood, Ohio, offices. Retroactive payments to employees relocated in Evansville are particularly unwarranted because they had free parking for only a few months prior to the move and, therefore, have not been severely disadvantaged. It maintains that the Panel has not previously authorized retroactive reimbursements in such instances. Furthermore, the Employer lacks the funds to provide them.

##### b. The Union's Position

The Union proposes the following:

The Employer will retroactively compensate any bargaining-unit employee deprived of parking benefits

<sup>2/</sup> See supra note 3.

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due to delay in implementation of a parking agreement. The ending date for the compensation will be the later date of either actual subsidized parking or notice from GSA that the requests in the MOU are not granted. The compensation will be \$20 per month.

According to the Union, its proposal would essentially provide a "make whole" remedy for employees who have been adversely affected by having to do without free parking for more than 2 years. Since their out-of-pocket expenses have been costly, employees should be reimbursed. The Union argues further that the reimbursement would help cure the negative effect on employee morale caused by termination of more advantageous parking arrangements. As with its proposal concerning a parking subsidy, the Union maintains that retroactive payments for this loss are not reimbursement for commuting costs, but rather, compensation for loss of free or low-cost parking previously enjoyed.<sup>8/</sup>

#### CONCLUSIONS

The record concerning this dispute reveals that the Employer's refusal to bargain over the Union's initial proposal for cost-free parking was premised on a good faith doubt that such a provision was negotiable under the terms of the parties' master collective-bargaining agreement. In this regard, we note that the arbitrator sustained, in part, the Employer's position finding that an obligation existed "to negotiate on every aspect of the parking issue except a proposal to make it entirely cost-free." However, once the parties executed the agreements concerning parking following the issuance of the arbitrator's award, the Employer was obligated by the terms of those agreements to take affirmative actions to help mitigate the financial burden of employees who, since the relocations, must pay for parking. The record before us indicates that although the Employer had entered into agreements with the Union on September 20 and 27, 1990, to take steps to secure convenient low-cost parking for employees, essentially, it has failed to execute those measures for the most part. Thus, employees continue to incur expenses for parking fees, which might have been mitigated had the Employer fulfilled its obligations under the agreements.

Therefore, under these special circumstances, and noting that employees had become accustomed to free or low-cost parking prior to the relocation of their offices, we conclude

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<sup>8/</sup> See supra note 6.

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that the Employer should furnish employees with a \$10-per-month adjustment for parking expenses incurred from the respective dates of the signing of the MOUs concerning parking at the Evansville and Lakewood facilities to the date of the Panel's Decision and Order. This adjustment is to be provided only to those (1) currently employed at either of the offices as of the date of the Panel's decision, (2) who were relocated from the prior facilities and, (3) who typically drive to work and incur actual parking expenses.

While we are fully aware that the compromise wording which we are ordering does not make employees whole, to some extent it does compensate them for the effects of the Employer's procrastination in implementing the terms of the MOUs which the parties negotiated pursuant to the relocations. Had the Employer diligently pursued the terms of those agreements, employees may not have suffered to as great an extent the loss of parking arrangements which they previously enjoyed. Although such an approach by the Panel is unprecedented, we find it justified in the circumstances herein to help provide a measure of equity to the situation. This action is not intended to be punitive in nature; rather, its purpose is to provide a financial adjustment to employees for that period of time between the respective dates of the MOUs which the parties previously had agreed upon, but were not put into effect as the record before us indicates and the date on which the Panel resolves the impasse. Limiting the adjustment only to certain employees should eliminate the administrative burden of locating those no longer employed at the facilities and attempting to calculate the parking expenses they may have incurred some time ago following their relocations. We also find it reasonable to exclude from receiving the adjustment those who were hired subsequent to the relocations since they were unaccustomed to the parking conditions enjoyed at the prior locations.

#### ORDER

Pursuant to the authority vested in it by section 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 section 2471.6(a)(2) of the Panel's regulations, the Federal Service Impasses Panel under section 2471.11(a) of its regulations hereby orders the following:



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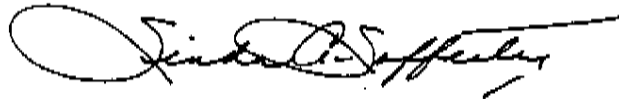
1. Subsidized Parking

The Union shall advise the Employer of the number of employees stationed in the Evansville District Office and the Cleveland Teleservice Center who are interested in obtaining a group rate at a nearby parking facility. Both parties shall then survey rates at parking facilities convenient to the offices. Thereafter, the parties shall meet to determine with which, of those facilities surveyed, the Employer should negotiate a group rate on behalf of employees. This entire process shall be completed within 30 days of implementation of the Panel's decision.

2. Retroactive Adjustment for Parking Expenses Incurred Since Relocations

The Employer shall provide a \$10-per-month adjustment to each employee for parking expenses incurred from September 20, 1990, or September 27, 1990, the dates of the signing of the Memoranda of Understanding concerning parking at the Evansville District Office and the Cleveland Teleservice Center, respectively, to the date of the Panel's decision. This adjustment shall be provided only to those (1) currently employed at either the Evansville District Office or the Cleveland Teleservice Center as of the date of the Panel's decision, (2) who were among those relocated and, (3) now typically drive to work and incur actual parking expenses.

By direction of the Panel.



Linda A. Lafferty  
Executive Director

August 22, 1991  
Washington, D.C.