United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF DEFENSE DEFENSE LOGISTICS AGENCY DEFENSE DISTRIBUTION REGION EAST NEW CUMBERLAND, PENNSYLVANIA and LOCAL 2004, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case No. 91 FSIP 75

DECISION AND ORDER

Local 2004, American Federation of Government Employees, AFL-CIO (Union), 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 Department of Defense, Defense Logistics Agency, Defense Distribution Region East, New Cumberland, Pennsylvania (DDRE or Employer).1/

After investigation of the request for assistance, the Panel directed the parties to have a teleconference with Staff Associate Gladys M. Hernandez for the purpose of resolving the furlough-related issues at impasse. 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 issues. 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/ When the request for assistance was filed the Employer was the New Cumberland Army Depot (NCAD). Subsequently, as part of the Department of Defense's reorganization efforts, a General Order transferring NCAD to the Defense Logistics Agency (DLA) was issued. DLA operates the facility as headquarters for DDRE, which has assumed NCAD's rights and obligations under existing collective-bargaining agreements.

Accordingly, Ms. Hernandez held a teleconference with the parties on September 24, 1991, but the parties were unable to reach agreement. She has reported to the Panel based on the record developed by the parties, and it now has considered the entire record in the case.

BACKGROUND

The Employer receives, stores, selects, and ships supplies worldwide for the Department of Defense. Also, as the host activity, it provides procurement support and assistance in administrative and logistical matters, i.e., personnel, supply, training, and common support services, to over 15 tenant activities. The Union represents approximately 2,700 General Schedule (GS) and Wage Grade (WG) employees who work for DDRE and 5 of the 6 organized tenant activities.[2/] GS employees hold such jobs as secretaries, supply clerks, quality assurance specialists, management analysts, engineering technicians, and engineers, among others. WG employees primarily work as warehouse workers and equipment operators. The dispute herein affects only those employees who work for DDRE, and two tenant activities, the USAISC and the Commissary. The collective-bargaining agreement (CBA) which covers Commissary employees is in effect until February 13, 1993; the one which covers DDRE and USAISC employees is due to expire on October 14, 1993.[3/]

Initially, the parties entered into impact-and-implementation negotiations over the DDRE's (then NCAD's), USAISC's, and Commissary's proposed furlough of employees to meet the budget shortfall expected in fiscal year

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2/ These 5 tenant activities are (1) U.S. Army Information Systems Command (USAISC); (2) Commissary; (3) U.S. Army Security Affairs Command; (4) U.S. Army Catalog Data Activity; and (5) U.S. Army General Material and Petroleum Activity; the employees working for each of these activities make up separate bargaining units. The sixth activity consists of a unit of firefighters represented by the International Association of Firefighters.

3/ The Union and USAISC entered into a memorandum of agreement (MOA) on May 18, 1989, wherein they agreed to be governed by the terms and conditions of the 1987 CBA between NCAD (now DDRE) and the Union. No other MOA has been entered into extending coverage of the current CBA between the Union and DDRE to USAISC. Nevertheless, the parties indicated to Ms. Hernandez that USAISC is covered by that CBA pursuant to the 1989 MOA.

(FY) 1991, because of impending across-the-board Gramm-Rudman-Hollings budget cuts.[4/] Toward the end of bargaining between the parties, Congress and the President reached a budget accord which halted those cuts, thereby obviating the need to furlough employees in FY 1991. The parties, however, mutually agreed to continue negotiations for a procedure to govern future furloughs so as not to have wasted the time already spent bargaining over that matter. The dispute arose during continued negotiations.

ISSUES AT IMPASSE

The parties are at impasse over whether employees should be allowed to (1) schedule their furlough days on a continuous basis regardless of the number of days involved,[5/] and (2) assume the furlough days of their co-workers.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer proposes the following:

> Employees may request the specific day or days (not to exceed 5 days or 40 hours in a pay period) to be furloughed during a pay period. Supervisors will accommodate the employee's request unless mission and/or workload require otherwise. Supervisors will provide the reasons for the disapproval in writing, if requested.
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> In the event that a furlough is implemented, the furlough will be managed on a quarterly basis in order to allow distribution evenly throughout the fiscal year.

4/ The other three activities with employees represented by the Union were not involved in these negotiations because they did not propose a furlough for FY 1991.

5/ We note that in American Federation of Government Employees, Local 32, AFL-CIO and Office of Personnel Management, 22 FLRA 307 (1986), aff'd mem. sub nom. Office of Personnel Management v. FLRA, No. 86-1482 (D.C. Cir. Sept. 24, 1987), the Authority found a proposal permitting employees to schedule their furlough on consecutive or staggered days to be negotiable.

The Employer acknowledges that under its proposal it would avoid incurring liability for unemployment compensation benefits,[6] which is not a "wrongful act" as suggested by the Union. In this regard, employees do not have a vested interest in unemployment compensation as they may have in a pension plan. To deny employees the opportunity to qualify for unemployment compensation is not tantamount to "a dismissal or discharge which operates to divest a pension," which is a "wrongful act." It wants to avoid paying unemployment benefits to employees because, unlike the Commonwealth's private employers, it does not pay into the Commonwealth's unemployment compensation fund on an ongoing basis, but rather, reimburses the Commonwealth only when it pays benefits to employees.[7] Thus, if employees were permitted to schedule their furlough on continuous days or assume their co-worker's furlough days such that they become eligible for unemployment benefits as the Union proposes, the Employer would have to expend monies it otherwise would not have had to, which would thwart the cost-savings goal of a furlough. This added expenditure also might put employees at risk of expanded furlough or a reduction in force (RIF), which would further endanger their financial well-being. Moreover, the Employer's operations might be detrimentally affected if employees were off the job for a longer period of time because additional furlough days or a RIF were needed in order to recoup savings lost to unemployment compensation.

That part of the Union's proposal which would permit employees to assume the furlough days of other employees is nonnegotiable because (1) it would not allow management to assign work to employees who have chosen to take additional furlough days; and (2) employees could avoid work assignments by assuming other employees' furlough days. Also, it may

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6/ It indicates that, in the Commonwealth of Pennsylvania, employees would qualify for unemployment compensation on their 6th day off the job, which is why it seeks to limit to 5 the number of furlough days they may take consecutively.

7/ The Employer did not provide support for this statement. We take notice, however, that the statement is consistent with law and regulation. See 5 U.S.C. § 8509; and 20 C.F.R. Part 609, Subchapter C (1991). See also Federal Personnel Manual, Chapter 850, Subchapter 2. In actuality, Federal agencies reimburse the Department of Labor for unemployment compensation payments made to states on behalf of their employees.

create (1) serious administrative problems for management, and (2) staffing problems, particularly in work areas where certain positions are "one of a kind."

Contrary to the Union's assertion, the Employer investigated other cost-cutting options for FY 1991 before deciding to furlough employees; it would do the same in the future. Finally, managing the furlough days on a quarterly basis so as to allow for their even distribution throughout the fiscal year would minimize the economic impact of the furlough on employees and workforce disruption for management.

2. The Union's Position

The Union proposes the following:

> Continuous Furlough: Employees wishing to do so will be permitted to concentrate the total furlough, rather than spread out furlough days during the entire fiscal year. Supervisors will accommodate the employees[']request[s] unless mission and/or workload require otherwise. Supervisors will provide the reasons for disapproval in writing, if requested. For example, if an employee is to be furloughed for 22 workdays/176 hours during the fiscal year, the employee may choose to be off 22 consecutive workdays/176 hours. The employer will provide a full written advance explanation of this option to employees.
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> Employees wishing to do so will be permitted to assume the furlough days/hours of like employees, with a cap of no more than 3 months total furlough to any individual. For example, a GS-05 may assume the furlough days/hours of another GS-05. It is by grade, title, and series.

The Union maintains that its proposal would make it possible for employees to become entitled to unemployment benefits, which would minimize the adverse impact of lost wages. Moreover, employees have a "legal right" to unemployment benefits, and it is "against Federal law" for the Employer to propose a furlough-scheduling scheme that is specifically intended to deny employees those benefits. In support of this argument, the Union, without providing a citation, referred to a 1988 decision by the Federal District Court in New Jersey involving the U.S. Steel Workers of America and Continental Can Corporation, where, it contends, the court held that denying employees benefits "guaranteed by law" is "against Federal law."

For FY 1991, management refused to look at other options for cutting costs, i.e., reducing overtime, freezing promotions

and hiring, and returning in-house previously contracted-out work, among others, to meet its budget. Rather, it "determined that all [cost] savings would come at the expense of employees." It doubts that expending funds on unemployment compensation would force the Employer to RIF employees because the General Services Administration has found that RIFs are six times more costly than furloughs.

Employees who are better situated financially should be permitted to assume the economic burden imposed upon less fortunate co-workers because doing so would not result in a loss of manpower or productivity for the Employer. The majority of employees are equipment operators who easily could perform one another's work. Finally, the Union is willing to discuss, on a case-by-case basis, whether incumbents of "one-of-a-kind" positions should be permitted to assume the furlough days of co-workers.

CONCLUSIONS

Having considered the arguments presented, we conclude that the dispute should be resolved on the basis of the Employer's proposal. We are persuaded that it would allow the Employer to reduce financial expenditures with the least disruption to operations while alleviating the economic impact of a furlough on employees. In our view, it is reasonably foreseeable that if the Employer is required to expend funds for unemployment compensation it could otherwise avoid, it might have to increase the number of furlough days or implement a RIF to meet its budget. This would not only detrimentally affect the Employer's operations, but potentially cause employees greater economic hardship.

Furthermore, we find significant that the Employer already has agreed to allow employees to seek a second job, within the limits prescribed by statute or regulation, and to provide them some assistance in doing so.[8/] This should help to mitigate the damage to employees' finances resulting from their being furloughed. The Employer also has agreed to (1) "consider alternative means of reducing costs" before deciding to furlough employees, and (2) "provide the results of those considerations to the Union."[9/] This indicates that it views

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8/ Provisions 18 and 19 of the Memorandum of Understanding (MOU) on furloughs.

9/ Provision 8 of MOU.

furloughing employees as a measure of last resort, which thereby diminishes the Union's argument that the Employer intends to achieve all cost savings at the employees' expense. Finally, we find that the equal distribution of furlough days among the 4 quarters of any fiscal year to be prudent. In this regard, it may avoid problems which may arise if employees take all such days during the first quarter and, subsequently, there is a change in the budget situation which makes it unnecessary to furlough employees to the extent initially anticipated. Hence, it may prevent the need for costly grievance arbitrations to resolve such problems during a period of fiscal constraint.

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 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 Employer's proposal.

Linda A. Lafferty
Executive Director

March 19, 1992
Washington, D.C.