United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE OGDEN SERVICE CENTER OGDEN, UTAH and NATIONAL TREASURY EMPLOYEES UNION	Case No. 91 FSIP 224

DECISION AND ORDER

The National Treasury Employees Union (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 the Treasury, Internal Revenue Service (IRS), Ogden Service Center, Ogden, Utah (OSC or Employer).

The Panel determined that the impasse, which involves the Ogden Service Center's eating, drinking, and radio-use policies, should be resolved through written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the dispute. Submissions were made pursuant to these procedures, and the Panel has now considered the entire record.[1]

BACKGROUND

The Employer, 1 of 10 service centers within the IRS, operates a large, factory-type facility whose mission is to process tax returns and related documents, and initiate correspondence to taxpayers. The parties estimate that, during peak season, the Union represents approximately 6,000 bargaining-unit employees at

[1]In its rebuttal statement, the Union requests that a declaration by the OSC's Director not be admitted into the record because it was submitted after the due date of the parties' initial written submissions. Given that the document arrived at the Panel's offices prior to the due date for the parties' rebuttal statements, and could in any event have been submitted as part of the Employer's rebuttal, the Union's request is denied.

the OSC in such jobs as clerk, tax-examining assistant, and data transcriber. They are part of a nationwide-consolidated bargaining unit of about 50,000 employees. The parties' master collective-bargaining agreement expires on June 30, 1994.

ISSUES AT IMPASSE

The parties are at impasse over: (1) the kinds of "finger foods" that employees should be permitted to consume at their workstations; (2) whether employees should be permitted to consume beverages at their workstations; and (3) whether employees should be permitted to use Walkman-type radios in work areas.

1. Food Consumption at Workstations

a. The Union's Position

The Union proposes that the parties "memorialize the past practice of eating finger foods at workstations and of eating more elaborate dishes on special occasions. Finger foods include candy, nuts, pretzels, cookies, sandwiches, popcorn, fruits, vegetables, and chips." Any Employer allegations that the Union's proposal violates management's rights and, therefore, is outside its duty to bargain, should be rejected. In this regard, the Employer's arguments for the most part go to the merits of the proposal, rather than its negotiability.

Permitting employees to consume food in their work areas would facilitate production. The Ogden Service Center's main facility is huge, and its cafeterias and canteens are overcrowded during the lunch period. It is time-consuming for employees to travel to these areas. Thus, because "most [OSC] employees are evaluated on the amount of work they perform and many are even paid by the amount of work they perform," eating at workstations saves time which could be spent working.

The Employer, on the other hand, has raised only "cosmetic" concerns as the reason for prohibiting the practice. In fact, however, "the practice of eating at workstations in the [OSC] is widely tolerated in most work units and on all shifts," as the affidavits of a number of employees confirm. This belies any Employer argument that it should be prohibited because of possible damage to equipment or official documents. Moreover, its survey of the other service centers "revealed that five of the nine" that responded "permit employees to eat at their desks or workstations." Its proposal, therefore, "is more reasonable and restrictive than the daily practice at the other service centers." Finally, during mediation the Union proposed that the Employer "simply memorialize the past practice of routinely eating finger food at workstations and eating more elaborate dishes on special occasions," but management failed to respond to the offer.

b. The Employer's Position

Under the Employer's proposal, in essence: (1) employees would be permitted to "have candy, gum, and shelled nuts at their workstations;" (2) on special occasions, subject to managerial approval, "light snacks, such as crackers, popcorn, cakes, donuts, fruit trays, vegetable trays, chips, and dips" could be consumed "provided that the work areas are left neat;" (3) special event organizers would be responsible "for establishing clean-up committees to restore work areas to their original condition;" and (4) managers would be responsible "for ensuring that work areas are left in a neat condition and food is controlled within the terms of these provisions." Unless specifically authorized by the wording set forth above, the consumption of food, including lunches, at workstations or in work areas would be prohibited. In its rebuttal statement, the Employer suggests that the parties are in virtual agreement on the matter, and that their "only significant difference" is that its proposal does not include "sandwiches" within the definition of finger food or food allowed on special occasions.

CONCLUSIONS

Having examined the parties' positions on the issue, while it appears they basically agree that the past practice with respect to the consumption of food at workstations should be continued, the record reveals some differences over exactly what the practice has been. Thus, to avoid future conflict over the matter, we shall order the adoption of the Employer's proposal. In our view, its greater specificity should leave no doubts in the minds of employees as to what the food consumption policy is, including the responsibilities of special event organizers and managers. Moreover, because its version of the policy appears more restrictive than the Union's, it would serve better to protect computer equipment and documents, avoid clean-up costs caused by accidents, and promote a more professional appearance.

2. Beverage Consumption at Workstations

a. The Union's Position

The Union proposes that the following wording be adopted:

> 1. Employees will be permitted to consume beverages at their workstations provided that screw-on, spring-loaded drinking containers [are] used.
>
> 2. The consumption of beverages will be prohibited in the computer room and at workstations with data processing terminals, personal computer or other electronic equipment.

Preliminarily, there is no merit to any contention that its proposal is nonnegotiable. The primary Federal Labor Relations Authority (FLRA) decision relied upon by the Employer in support of its nonnegotiability contentions[2] involves facts which do not correspond with those pertaining to this case. Moreover, by permitting the consumption of beverages only from screw-on, spring-loaded drinking containers, which "do not release their contents unless the spring-loaded button is depressed," and prohibiting it at any workstation with electronic equipment, its proposal accommodates any valid concerns the Employer may have about harm to its equipment.

The same rationale for permitting employees to consume food at their workstations applies to beverages, i.e., "it saves time which could be spent working." In addition, "the frequent consumption of fluids is considered healthy for the human body and many employees have medical problems" which require it. Its survey of the other service centers revealed that 9 out of 10 allow employees to consume beverages at their workstations, with 7 requiring the use of spill-proof cups. This "strongly suggests that spillage, either on official documents or around equipment, has not posed a problem." Finally, the sworn affidavits of a number of employees demonstrate that, even at the OSC, "enforcement of a ban on beverages in work areas has been lax," especially on the swing shift, and management itself "is not preoccupied with spillage."

b. The Employer's Position

The Employer would permit employees to consume beverages in the cafeterias and canteens of the OSC. No employee, however, would "be allowed to remove a beverage of any type from the cafeteria or canteens," nor would employees be permitted to "have or consume drinks in the work areas of the Center." Initially, it maintains that the Union's proposal interferes with management's

---

[2]The Union is referring to Voice of America and National Federation of Federal Employees, Local 1418, 41 FLRA No. 85 (July 31, 1991) (VOA), where the union's proposal concerned the consumption of liquids from "commuter mugs" by employees working around highly sensitive broadcast equipment. The FLRA found that the proposal excessively interfered with the employer's right to determine its internal security practices, under § 7106(a)(1) of the Statute, which includes the right to take actions which are part of its plan to secure or safeguard its physical property. It also affirmed an ALJ's finding that the union's proposal interfered with the employer's right to determine the technology, methods, and means of performing work, under § 7106(b)(1), which encompasses "anything used to attain or make more likely the attainment of a desired end, and . . . refers to any instrumentality, including an agent, tool, measure, plan, or policy used by the agency for the accomplishing or furthering of the performance of its work."

rights to determine its internal security practices, under § 7106(a)(1) of the Statute, and the methods, means, and technology of performing the work of the Agency, under § 7106(b)(1). This contention is based primarily on the FLRA's decisions in Local 2578, American Federation of Government Employees and General Services Administration, National Archives and Records Service, Headquarters, Washington, D.C., 6 FLRA 477 (1981)(Archives),[3] and VOA.[4] It also requests "a formal ruling" on the negotiability issue "before any decision on the merits."

Without "waiving" its jurisdictional arguments, it urges the Panel to adopt its proposal, which represents a continuation of the status quo, on the merits of the issue. Its beverage-consumption policy has been in place for many years, and has worked satisfactorily in the past. In this regard, it "helps to avoid the inevitable spills and resulting hazards to employees," and protects the original tax returns the IRS must maintain. At the same time, employees receive a lunch break during each shift and two additional 15-minute breaks when they can use the OSC's large cafeteria and several canteens. The current policy is "very similar to those of the Memphis and Cincinnati Service Centers."

The Union's proposal, on the other hand, is unacceptable because of the "housekeeping and cleanliness" problems it would create, including an increase in cleaning costs. The Union's supporting arguments "speak only of alleged benefits to the employees" but "fail to balance the benefits against the Agency's legitimate needs." Moreover, while the Employer will accommodate employees with acceptable medical reasons for needing access to liquid's at their desks, this "does not justify broadly allowing employees to drink at workstations." Finally, management attempts to apply its beverage-consumption policy strictly. Just because some employees violate it does not mean the policy should be abandoned.

---

[3]In Archives, the FLRA held that a proposal allowing employees to eat at their workstations "unless actual danger to the work process would otherwise result" interfered with the employer's right to determine the technology by which it performs its mission of preserving the national archives of the U.S., i.e., that its prohibition on eating in areas where records are stored is part of a group of protective and preventive measures which that employer uses to maintain an environment suitable to the preservation of records.

[4]See footnote 2 above.

CONCLUSIONS

Turning first to the duty-to-bargain question, regardless of the validity of those arguments, given the parties' proposed solutions to a perceived workplace problem, we find the Employer's to be more reasonable. In this regard, it is of paramount importance to the Employer's mission that original tax documents and checks from taxpayers be safeguarded to the maximum extent possible. In our view, the consumption of beverages in work areas, even from "screw-on, spring-loaded drinking containers," is incompatible with this requirement. The evidence supplied by the Union as to the policies at other service centers, while perhaps explaining why its proposal is desirable, is not for us dispositive. We agree with the Employer that permitting individuals with bona fide medical reasons to consume beverages in work areas is the only appropriate exception under the circumstances. For all other employees, however, existing lunch and break periods should continue adequately to meet their beverage-consumption needs. Accordingly, we shall order the adoption of the Employer's proposal.

3. Use of Radios in Work Areas

a. The Union's Position

The Union proposes the following wording:

> 1. Employees will be permitted to wear Walkman radios or cassette/CD players with personal headphones in their work areas.
>
> 2. The use of Walkman radios will be subject to a 1-year trial period. At the end of a year, the agreement will be reopened and revisited to determine the impact of Walkman radios on the quantity and quality of production. In areas where it is determined, independently of other extenuating conditions, that Walkman radios have had a detrimental impact on production, the right to wear Walkman radios would cease.
>
> 3. Employees' right[s] to wear Walkman radios will be anchored to production. If in a given week, an employee's production level falls, he or she will be counselled. If an employee's production suffers a decline for 2 consecutive weeks, the right to wear a Walkman will be discontinued until production resumes at previous levels.

Once again, there is no merit to any contention that its proposal is nonnegotiable. Further, the Employer's argument that the use of Walkman radios does not constitute a "condition of employment"

contradicts its own definition of the term, and "shows a genuine lack of familiarity with working conditions" at the OSC. In this regard, the testimony of a number of employees described the "cacophonous drone of distracting background noise which impedes concentration on their work." Its proposal, therefore, would have a direct impact on the way work is performed by eliminating noise pollution and mitigating boredom. The net effect would be an increase in productivity.

Its survey "reveals that 9 out of the 10 service centers permit employees to listen to Walkmans or similar devices on the job." This right "was established through a past practice," and management at these installations has never attempted to terminate it. The survey validates the premise that "the use of Walkman radios relieves the monotony of routine, repetitive, and tedious clerical work performed by most employees in the factory-type environment at the service centers." Their long-standing and widespread use "strongly suggests that they have had no adverse impact on production." Nevertheless, its proposal offers the Employer further assurances, such as a 1-year trial period, and the right to terminate the use of Walkmans, on an individual basis, if an employee's production falls.

The Employer's arguments against the use of radios with headphones "are speculative and unsupported by certified evidence." In particular, there is no reason to conclude that their use "might" make employees less responsive to supervisors because special instructions are communicated orally, one on one, and removing the headsets to receive them "should not constitute an appreciable problem." Its concerns with an "unprofessional image," and about employees not hearing safety announcements over the intercom system, are "also groundless." Most visitors to the OSC are IRS management officials, and the Employer "made no showing that the intercom system is ever used for safety announcements." Even the Agency admits that the piped-in music on the intercom system is not well-liked by employees, "yet inexplicably concludes that the system 'has been effective in the past'." Finally, the Employer has committed "a glaring omission" by providing no evidence from the other service centers regarding the alleged detrimental effect that the use of such devices has had on production.

b. The Employer's Position

The Employer opposes the use of radios "of any type in any work area or workstation." For the same reasons as stated in connection with the previous issue, the Union's proposal interferes with management's rights to determine its internal security practices, under § 7106(a)(1) of the Statute, and the methods, means, and technology of performing the work of the Agency, under § 7106(b)(1). In addition, the proposal does not concern a condition of employment because it involves "the use of a personal

item during the workday and is only tangentially related to any personnel policy or procedure" and is unrelated "to any work assigned to employees by the Agency."[5]

On the merits, it urges the Panel to order a continuation of the status quo, which requires employees to "focus their attention on their given tasks, instead of on entertainment during the workday." Allowing the use of such devices could distract both the employee and his or her co-workers, "since even with headphones the sounds from a Walkman can be heard for several feet," leading to an increase in the number of errors made. It is also concerned that their use would present an unprofessional image to visitors, adversely affect employees' responsiveness to supervisors, and interfere with important safety announcements transmitted over the intercom system.

The Union's arguments "center around employee preference." The issue, however, is productivity, and not "employee choice." In this regard, the OSC now uses a music system "professionally designed to promote efficiency," whereas the Union "has no evidence to support" its view that productivity would rise under its proposal. The OSC values its reputation for efficient and quality service, and "the productivity of such a large organization should not be jeopardized without strong evidence supporting change." Finally, the part of the Union's proposal requiring it to stop an employee's Walkman-radio use if production drops "is unworkable" because it forces supervisors to guess why an employee's performance drops, and could result in the routine filing of grievances. It also puts "a new requirement on managers to counsel employees about a weekly decline in production."

CONCLUSIONS

As with the previous issue, we find the Employer's position to be more reasonable. On the basis of the record presented here, we conclude that a need to change the status quo has not been demonstrated. In our view, the main argument presented by the Union in support of its position, i.e., that productivity is likely

---

[5]In support of this contention, the Employer cites a number of FLRA decisions, among them, Veterans Administration Medical Center, Leavenworth, Kansas and American Federation of Government Employees, AFL-CIO, Local 85, 40 FLRA 592 (1991); American Federation of Government Employees, AFL-CIO, Local 644, and Department of Labor, Mine Safety and Health Administration, 27 FLRA 375 (1987); American Federation of Government Employees, Local 2094, AFL-CIO and Veterans Administration Medical Center, New York, New York, 22 FLRA 710 (1986); and American Federation of Government Employees, AFL-CIO, Local 1917 and U.S. Department of Justice, Immigration and Naturalization Service, New York City District Office, 4 FLRA 150 (1980).

to increase if employees are permitted to use Walkman-type radios in work areas, appears speculative. Further, the part of its proposal linking the use of such radios to production could lead to disagreements and grievances, and, at the very least, would be unnecessarily burdensome on supervisors to administer.

The Union's reliance on current practices at the other service centers provides insufficient evidence to warrant a different result. In this regard, while the Panel continues to encourage parties to settle their workplace disputes voluntarily, it does not necessarily follow that we will impose a resolution on the basis of accommodations that others have reached. In the circumstances of this case, we are persuaded that the Employer's interest in maintaining a highly productive workforce outweighs employees' personal preferences regarding the use of radios in work areas. We shall, therefore, order the adoption of the Employer's position.

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 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:

1. Food Consumption at Workstations

The parties shall adopt the Employer's proposal.

2. Beverage Consumption at Workstations

The parties shall adopt the Employer's proposal.

3. Use of Radios in Work Areas

The parties shall adopt the Employer's position.

By direction of the Panel.

Linda A. Lafferty
Executive Director

March 26, 1992
Washington, D.C.