United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF THE NAVY MARE ISLAND NAVAL SHIPYARD VALLEJO, CALIFORNIA and LOCAL 5, PLANNERS, ESTIMATORS, PROGRESSMEN, AND SCHEDULERS; FEDERAL EMPLOYEES METAL TRADES COUNCIL; LOCAL 25, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO; AND LOCAL 11, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO	Case Nos. 92 FSIP 147, 150, 151, and 159

DECISION AND ORDER

Local 5, Planners, Estimators, Progressmen, and Schedulers (PEPS); Federal Employees Metal Trades Council (FEMTC); Local 25, International Federation of Professional and Technical Engineers (IFP&TE), AFL-CIO); and Local 11, IFP&TE, AFL-CIO (Unions), each filed separate requests for assistance with the Federal Service Impasses Panel (Panel) to consider negotiation impasses under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between them and the Department of the Navy, Mare Island Naval Shipyard, Vallejo, California (Employer).

At the request of the Unions, the Panel consolidated the cases, and determined that the dispute, which arises from impact-and-implementation bargaining over the Employer's decision to curtail its operations from June 29 through July 2, 1992, should be resolved on the basis of a single written submission from each of the parties, with the Panel to take whatever action it deemed appropriate to resolve the dispute. Only the Unions' submissions were made pursuant to these procedures.[1/]

1/ In this regard, the Employer's submission exceeded the specified page limits. Shortly thereafter, Local 5, PEPS, (continued...)

BACKGROUND

The Employer is an industrial-funded activity whose primary mission is to repair Naval vessels, mainly submarines. Local 5, PEPS (Case No. 92 FSIP 147), represents approximately 210 planners, estimators, progressmen, and schedulers. The parties are currently negotiating over a collective-bargaining agreement to replace the one which was to have expired in October 1988, but has been extended by mutual agreement. The FEMTC (Case No. 92 FSIP 150) represents approximately 3,600 employees in a wide variety of trades and crafts. The parties' collective-bargaining agreement, which was to have expired in April 1992, also has been extended by mutual agreement, and they are currently negotiating groundrules for a successor. Local 25, IFP&TE (Case No. 92 FSIP 151), represents approximately 550 professional employees, most of whom are engineers. The parties' collective-bargaining agreement expires on February 18, 1993. Local 11, IFP&TE (Case No. 92 FSIP 159), represents about 1,500 bargaining-unit employees, GS-3 through -12, in such jobs as clerk and technician. The parties' collective-bargaining agreement was to have expired in September 1988, but has been extended by mutual agreement. Negotiations for a successor currently are underway.

ISSUE AT IMPASSE

The parties essentially are at impasse over whether the Employer should give employees administrative leave for each day they take annual leave, leave without pay, or other leave during the curtailment period.

1. The Unions' Position

The Unions propose the following wording:

> In the event the Shipyard shuts down or cuts back operations during the period of June 29 through July 2, 1992, the Employer shall grant non-essential employees the option of using annual leave or other paid leave in lieu of leave without pay. The Employer further agrees to grant employees 1 day o[f] administrative leave for each day the employee takes annual leave, leave without pay, or other leave during the shutdown period.

1/(...continued)
submitted an unsolicited rebuttal statement pointing out, among other things, that the Employer had failed to comply with the procedures outlined in the Panel's determination letter. Neither the Employer's submission, nor Local 5, PEPS's rebuttal statement were considered by the Panel in resolving the instant impasse.

The proposal is substantively identical to one found negotiable by the Federal Labor Relations Authority (FLRA)[2/] as an appropriate arrangement for employees adversely affected by management's right temporarily to shut down operations, and should be adopted by the Panel for the same reason. The Employer's plan to force employees to use their annual leave during the shutdown period, on the other hand, "is illegal on its face."[3/] Moreover, forcing employees to use annual leave in these circumstances is inconsistent with wording in Federal Personnel Manual (FPM) Chapter 630, which has been incorporated into a number of the parties' current collective-bargaining agreements.[4/] In essence, the Employer is attempting to force employees to use annual leave, which is a legally earned and ensured benefit, for purposes for which it is not intended.

While the Employer has the right to curtail operations, its reasons for doing so have changed over time. In this regard, savings in utility costs or wages, if any, "are substantially less than estimated by the Agency,"[5/] and it has failed to show a workload-related reason for the shutdown. In fact, the Unions

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2/ National Association of Government Employees, Local R7-72 and U.S. Department of the Army, Rock Island Arsenal, Rock Island Illinois, 42 FLRA 1019 (1991) (Rock Island).

3/ Local 5, PEPS's submission at 5, and Local 11, IFP&TE's submission at 6. In support of their position as to the illegality of the Employer's plan to force employees to use annual leave during the shutdown period, the Unions generally cite the FLRA's decision in National Association of Government Employees and U.S. Department of Veterans Affairs, Washington, D.C., 43 FLRA No. 42 (December 13, 1991)(DVA).

4/ The relevant portion of FPM Chapter 630, § 3-4, states as follows:

> 3-4. Granting Annual Leave
> a. Purposes. Annual leave is provided and used for two general purposes which are:
> (1) To allow every employee an annual vacation period of extended leave for rest and recreation, and
> (2) To provide periods of time off for personal and emergency purposes.

5/ Local 5, PEPS's submission at 4. On this same point, FEMTC's submission at 1 suggests that the Panel "order full hearings because of the vigorously disputed question of whether any cost savings is effected by the Activity's proposal."

workload-related reason for the shutdown. In fact, the Unions suspect that whatever budgetary problems exist at the facility are a result of mismanagement, and that the shutdown "is merely an attempt by the Shipyard to use creative bookkeeping" to make such problems appear less severe than they actually are.[6/] In any case, by providing employees with administrative leave for each day they are forced to take annual leave during the shutdown period, their proposal "does not cost the Agency anything more except to preserve annual leave which has already been earned."[7/] Given the Employer's inability to justify the shutdown, the Unions' proposal represents an appropriate accommodation for employees inconvenienced and deprived of their rights by the Employer's proposed actions.

2. The Employer's Position[8/]

The Employer would have the Panel order the Unions to withdraw their proposal. The purpose of the shutdown is "to realize a savings of approximately $1.7 million." Although "all four [U]nions agree that the Activity has the right to shutdown," the purpose of the Unions' proposal "is in effect to negate the benefit of the planned shutdown for the Shipyard and thus force management to rescind the decision." There has been a past practice at the Shipyard of shutting down operations during the Christmas holidays, and "all four [U]nions have provisions in their respective collective-bargaining agreements relative to [the] topic of shutdown of the Shipyard and/or the subject of the required use of annual leave." Moreover, it is willing to advance annual leave to employees with insufficient leave balances to cover the shutdown period.

CONCLUSIONS

Having examined the evidence and arguments on this issue, we shall order the Unions to withdraw their proposal. Preliminarily, the Unions' position that forcing employees to take annual leave would be illegal must be rejected. In a parenthetical statement at 432 of the DVA decision cited by the Unions in support of their view, the FLRA states that "where group dismissal is appropriate,

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6/ Local 5, PEPS's submission at 4; Local 11, IFP&TE's submission at 4.

7/ FEMTC submission at 10.

8/ This summary of the Employer's position is based upon information gathered during the Panel's preliminary investigation of the dispute, including a statement filed by the Employer prior to the Panel's assertion of jurisdiction in the cases.

if appropriate, to furlough employees and must negotiate to the extent of that discretion." The instant impasse arose during impact-and-implementation negotiations over the Employer's decision to curtail operations at the Shipyard by requiring employees to take annual leave. In our view, the Employer is merely negotiating, to the extent of its discretion, its decision to require employees to take annual leave during a group dismissal, consistent with the DVA decision.[9/]

Turning to the merits of the dispute, we conclude that the Unions have provided insufficient justification for the adoption of their proposal. Although they would lose no income, we are mindful that forcing employees to take 32 hours of earned annual leave at a time they otherwise would not is unquestionably an inconvenience which may disrupt personal plans. The benefit employees would gain under the Unions' proposal, however, i.e., an additional day of paid leave for each day an employee is forced to use annual leave during the shutdown, is incommensurate with this disruption. Moreover, adoption of the proposal may force the Employer to cancel the proposed shutdown, and lose whatever benefits it expected to gain from temporarily curtailing its operations.[10/]

Finally, the record indicates that temporary shutdowns have occurred at the Shipyard in the past, albeit during the Christmas holidays, and that each of the Unions in this case has wording in its current collective-bargaining agreement applying to employees in such circumstances. In this regard, portions of two of the agreements provided by the Employer show that employees are

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9/ Moreover, to the extent that the Unions are alleging that their respective collective-bargaining agreements require that employees be granted administrative leave, and prohibit the Employer from forcing employees to use annual leave if a curtailment of operations occurs, such allegations should be pursued under their negotiated-grievance procedures.

10/ In reaching this result, it is unnecessary to consider the Employer's justification for curtailing its operations. The parties all agree that the Employer has this right, regardless of whether the Unions have raised legitimate questions as to the actual benefits to be gained. We note only in passing our belief that the decision to curtail operations was made for **some** reason. As to the Unions' contention that their proposal should be adopted because the FLRA concluded that a substantively identical one was an "appropriate arrangement" for employees adversely affected by the exercise of this management right, in finding a proposal negotiable the FLRA explicitly states that it makes "no judgment as to its merits." Under the Statute, such judgments are left to the Panel.

of the agreements provided by the Employer show that employees are permitted to work and accumulate compensatory time for use during closure periods. In conjunction with the Employer's offer to advance annual leave to employees with insufficient leave balances, we are persuaded that such provisions should provide adequate protection for affected employees against the inconveniences caused by the Employer's decision to require the use of annual leave during the shutdown period.

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:

The Unions shall withdraw their proposal.

By direction of the Panel.

Linda A. Lafferty
Executive Director

June 25, 1992
Washington, D.C.