

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

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In the Matter of	)	
	)	
DEPARTMENTS OF THE ARMY	)	
AND AIR FORCE	)	
ARMY AND AIR FORCE	)	
EXCHANGE SERVICE	)	
WACO DISTRIBUTION CENTER	)	
WACO, TEXAS	)	
	)	
and	)	Case No. 90 FSIP 191
	)	
LOCAL 4042, AMERICAN FEDERATION	)	
OF GOVERNMENT EMPLOYEES, AFL-CIO	)	
	)	

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DECISION AND ORDER

Local 4042, 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 section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Departments of Army and Air Force, Army and Air Force Exchange Service, Waco Distribution Center, Waco, Texas (Employer).

After investigation of the request for assistance, the Panel directed the parties to have a telephone conference with Chief Legal Advisor Donna M. Di Tullio for the purpose of resolving the issues at impasse. The parties were advised that if no settlement were reached, Ms. Di Tullio 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.

Ms. Di Tullio held telephone conferences with the parties on November 19 and 21, 1990, but the parties were unable to reach a settlement. She has reported to the Panel based on the record developed by the parties, and it has considered the entire record in the case.

BACKGROUND

The Employer distributes merchandise for sale to authorized patrons at military exchanges in the United States and overseas. The Union represents approximately 410 nonappropriated-fund employees in a broad range of occupations, including accounting technician, data terminal operator, industrial equipment mechanic, maintenance, warehouse, and automotive worker, general clerk, motor vehicle operator, and laborer. These employees are part of a worldwide consolidated bargaining unit of approximately 20,000 employees who are covered by a master labor agreement between the American Federation of Government Employees, AFL-CIO (AFGE) and the Army and Air Force Exchange Service (AAFES) which was to expire in April 1990; currently, its terms and conditions are being continued. There is no local level collective-bargaining agreement in effect.

The dispute arose during Union-initiated negotiations over Union office and bulletin board space, and impact-and-implementation bargaining over the Employer's proposed change in two unrelated work policies, scheduling of holiday work and off-duty access to the workplace. Bargaining over these four issues was contemporaneous.

ISSUES AT IMPASSE

The issues in dispute concern: (1) Union office space and equipment; (2) bulletin board space; (3) holiday scheduling; and (4) off-duty access to the Employer's facility.

1. Union Office Space and Equipment

a. Employer's Position

The Employer proposes the following:

Management will furnish to AFGE two file cabinets for AFGE's use and will place these cabinets in a reasonable location to be picked by AFGE. Space for representation duties consistent with the Master Agreement will be provided as necessary.<sup>1/</sup> Further, if a confidential area is necessary, Management will locate such space on an as-needed basis.

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<sup>1/</sup> The term agreement between AAFES and AFGE provides in Article 10, section 1.b., that "the Employer will make space available to the Union to conduct necessary representational functions. Provisions for amount, location, and type of space is appropriate for bargaining at the local level."

With respect to facilities and services for the Union, the master collective-bargaining agreement specifically addresses only office space and telephone access.<sup>2/</sup> Therefore, the Employer is not required to provide equipment and furnishings. No space is available for a fully-equipped Union office; rather, one would have to be built which could be a costly venture. Even if space were available, the level of Union activity does not justify allocation of a fully-equipped office.

Several break rooms throughout the Employer's facilities, i.e., in shipping, transportation, and administration, as well as the offices of the personnel manager and her assistant, could be made available for confidential meetings with unit employees when not in use. Since there is continuous movement of merchandise by forklifts and on conveyors in the receiving area of the distribution center, converting a break room there into a Union office would raise safety concerns. The break room in the Transportation Building is also inappropriate as it is an open area which would have to be enclosed at some expense. Furthermore, since the area is small it may not hold all the equipment and furnishings proposed by the Union. Moreover, employees would have to cross trucking lanes to reach it if they walk there, raising another safety concern.

b. The Union's Position

The Union proposes that the Employer provide it with furnished office space to include: (1) two file cabinets; (2) two tables and chairs; (3) one typewriter and word processor; and (4) two telephones with the Employer to pay for the basic rate and long distance charges. In addition, the Union would be allowed access to the Employer's FAX and photocopier at no cost.

It maintains that since the Employer cannot always provide space for Union representatives to meet privately with employees, a permanent designated office should be provided to the Union. Space could be made available for a Union office by converting the small break room in the transportation area or one of the break rooms in the administration or shipping areas. Using a break room as is for a private meeting with an employee is inappropriate because supervisors sometimes stay in

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<sup>2/</sup> Article 10, section 8, provides that "[a]t locations where the Union has an office provided by AAFES and a telephone is not currently installed, the Union may request a telephone for its use in conducting necessary representational obligations. In locations where no office space is provided, the Union will have access to telephones utilized by the Employer for the stated purpose."

the break room to monitor the conversations, and truck drivers take their unscheduled breaks there.

Without an equipped and furnished private office, it would be difficult for the Union to perform its representational duties. Currently, contrary to the terms of the master agreement, the Employer does not permit the Union access to its telephones or typewriters. Representation-related calls must be placed from a pay telephone. The only equipment to which the Union has access is the local president's typewriter which is kept in her home. Consequently, the bulk of representation work falls upon her, and must be performed on her off-duty time. The level of Union activity warrants allocation of office space and equipment; there are representation-related matters that the Union is unable to pursue because it lacks space and equipment.

#### CONCLUSION

Having considered the evidence and arguments, we conclude that neither party's proposal provides an adequate solution. The record indicates that, in the past, the Employer has not been consistent in providing the Union with a private meeting area on an as-needed basis. Moreover, the Employer has failed to demonstrate that there is no space available which could be converted to accommodate a permanent office for the Union or that converting such space would be cost-prohibitive. Furthermore, the Union's proposal lacks specificity with respect to office space and, therefore, could give rise to a future dispute over the adequacy of the permanent space allocated. Accordingly, we shall order the parties to adopt compromise wording requiring the Employer to convert the small break room in the Transportation Building to a Union office. In addition, the Employer shall provide the Union with: (1) two file cabinets; (2) one desk and desk chair; (3) one table and six chairs; (4) one telephone with an outside line, with the Employer to pay the installation fee and basic rate only; and (5) access to the Employer's FAX machine and photocopier at cost. In our view, this equipment should prove adequate for the Union to accomplish its representational duties. The evidence shows that the break room in the Transportation Building is the best available space for conversion to a Union office.<sup>3/</sup>

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<sup>3/</sup> During the course of the informal telephone conference the parties discussed various break rooms as possible sites for the Union office. Subsequently, the parties visited these break rooms and reported to the Panel representative their findings on the feasibility of converting any of them to a Union office. In addition, the Employer submitted pictures of the break room in the Transportation Building.

Allocation of a specific permanent space as a Union office should assure confidential discussions between bargaining-unit employees and their designated Union representatives. Furthermore, it should help avoid conflicts and complaints over office space, thereby promoting a stable working relationship between the parties. With respect to the Union's proposal that it be provided with free long distance telephone service, we find no justification given that bargaining-unit employees, local Union representatives, and management personnel are located at the same facility. We do not authorize that a second typewriter be provided to the Union as it already possesses one and has failed to demonstrate a need for another.

2. Bulletin Board Space

a. Employer's Position

The Employer would provide 2 by 3 feet of space for a bulletin board in the transportation and administration areas and, although the master agreement requires only that bulletin board space be authorized<sup>4/</sup>, it may provide two 2- by 3-foot bulletin boards, one each to be placed in the receiving and order select/storage areas. Currently, the Employer provides space to the Union on its own board located by the time clock in the administration area. Space in the transportation area would be appropriate since it is located in a separate building. All other bulletin board space controlled by the Employer in other work areas is in use; no space is readily available and none can be spared.

b. Union's Position

The Union proposes that the Employer furnish bulletin boards measuring 2 by 3 feet in each of the following areas: (1) transportation; (2) administration; and (3) order select/storage. In addition, the Employer should provide 2 by 3 feet of wall space for bulletin boards in the shipping and receiving areas. Doing so would allow the Union to disseminate information to unit employees in all work areas; furthermore, other distribution centers within AAFES maintain the practice.

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<sup>4/</sup> Article 10, section 2.a., states that "[b]ulletin board space will be made available to the Union to effectively disseminate general interest information at each work location. The space will be located in the immediate vicinity where employee notices are normally posted. Space of at least 2 by 3 feet in size will be provided at each facility. Additional board space and its location are appropriate subjects for bargaining at the local level."

Since the Employer has at least one bulletin board in each work location, it is reasonable for the Union to have space available in all work locations to communicate with employees. The number of unit employees who work in the shipping area warrants that wall space for a Union-furnished bulletin board be provided there.

#### CONCLUSION

We find that the Union's proposal provides a reasonable basis for resolution of this matter. In our view, requiring the placement of bulletin boards or furnishing a small amount of wall space in each area where bargaining-unit employees are assigned to work should result in only a small expenditure for the Employer; moreover, it is reasonable given that the Employer has bulletin boards for its own use in all employee work areas. Furthermore, the Union's proposal is consistent with the provision on bulletin boards in Article 10, section 2.a. of the parties' collective-bargaining agreement. In this regard, it effectuates the policy advanced therein -- effective dissemination of information to employees in each work area. Finally, the Employer's claim that it lacks wall space for Union-furnished bulletin boards in all employee work areas is unsubstantiated and without merit.

### 3. Holiday Scheduling

#### a. Employer's Position

In essence, the Employer proposes to retain the current practice which is to divide employees into "red" and "blue" teams for the purpose of scheduling holiday work. When it becomes necessary to assign employees to work on a holiday, one team would be selected, and the other would be scheduled to work the next holiday if needed. An employee assigned to the team not scheduled to work would be allowed to trade with one on the scheduled team "as long as employees trading are qualified to carry out the duties assigned, and the appropriate supervisor is advised of the trade." Currently, there is less need for employees to work on holidays as there had been when the Distribution Center first opened. Scheduling of holiday work, however, is sometimes necessary because inventory must be distributed to stores on Army and Air Force bases which are normally opened on all but two holidays, Christmas and Thanksgiving. Administrative personnel are excluded from participating in this procedure because they perform different functions from warehouse employees. Making team assignments based solely on marital status, as the Union prefers, would be discriminatory.

b. Union's Position

The Union proposes that the distribution of holiday work be fair and equitable. All employees should be required to participate in the Employer's two-team scheduling approach. The team concept, however, does not accommodate the problem of husbands and wives who are not assigned to the same team and may wind up working different holiday schedules, thereby disrupting family life. Since there have been holidays when some scheduled employees have had no work to do, it may not be necessary for all employees on a team to be scheduled for holiday duty.

CONCLUSION

We are persuaded that the Employer's current two-team procedure for assigning holiday work should be the basis for resolving the dispute. In our view, this procedure provides a reasonable balance between the Union's desire for fairness and equity in scheduling of holiday work and the Employer's need to carry out its mission. In addition, it accommodates the personal needs of employees by allowing them to "trade-off" under prescribed criteria. Moreover, we note that there is no evidence in the record of widespread employee hardship under the current scheduling procedure.

4. Off-duty Access to the Employer's Facility

a. Employer's Position

Under the Employer's proposal, off-duty unit employees would not be allowed to "remain in or reenter the distribution center without proper authority."<sup>5/</sup> Restricting off-duty access to its facility is necessary for security reasons; that is, to guard against merchandise theft. Contrary to the Union's claim, Union representatives would not be foreclosed from performing representation-related duties during their off-duty work hours; rather, consistent with Article 6, section

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<sup>5/</sup> This policy was implemented in March 1990.

2, and Article 9, section 10, of the master collective-bargaining agreement<sup>6/</sup>, they would be required merely to apprise the Employer when they need to meet with on-duty employees so that they can be released from duty.

b. Union's Position

In essence, the Union proposes that, subject only to the Federal Service Labor-Management Relations Statute and the parties' collective-bargaining agreement, Union representatives' and unit employees' access to the Employer's facility and to other unit employees be unrestricted, without interference with employees' rights to organize and solicit membership in the Union. The Employer's current policy is being applied disparately. In this regard, nonunit employees, such as supervisors and persons "off the street," as well as off-duty unit employees who are not Union representatives, have free access to the premises while the access of Union representatives is restricted. Furthermore, on occasion, the Employer has restricted access to the facility of off-duty Union representatives who were attempting to communicate with employees during breaktime.

CONCLUSION

We conclude that this issue should be resolved by balancing the self-organizational rights of unit employees against the Employer's interest in protecting its property and carrying out its mission. In this regard, the important factors to be considered are whether (1) the no-access policy applies to all

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<sup>6/</sup> Article 6, section 2, provides that "it is mutually beneficial to periodically remind employees that solicitation of membership or dues or other internal business of the Union will not be conducted during the working hours of the employees concerned." Article 9, section 10, states, in pertinent part, that "[r]epresentatives of the Union will be provided reasonable and necessary access to unit employees," and that "[t]he Employer will not unreasonably restrict access to a restricted area within a facility; a representative who is not otherwise authorized to enter the restricted area will be escorted by an Employer representative to such area to contact an employee, or the employee will be permitted to leave the restricted area to meet with the Union representative in a timely manner ... ."



off-duty employees, whether or not they are engaged in Union activities, and (2) there are alternative means of communication available to the Union and the employees it represents.

With respect to the applicability of the Employer's no-access policy, we note that it appears on its face to be nondiscriminatory, and there is no conclusive evidence which shows disparate application. As to the availability of other means of communication, the master collective-bargaining agreement gives unit employees the right to distribute literature and to engage in other Union activities during their nonwork hours, as well as authorizes Union representatives access to unit employees for representational purposes. In addition, the record indicates that Union representatives have unrestricted off-duty access to outside building areas. Furthermore, the Employer's policy does not prohibit off-duty access to its facility outright, but merely sets forth a condition precedent to gaining access, namely, notice and permission. Under these circumstances, and noting particularly that the Employer's facility contains merchandise which requires due care to safeguard it, the Employer's policy limiting the off-duty access of all employees to its facility is reasonable and, accordingly, we will order its adoption.

#### 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 proceeding 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:

#### 1. Union Office Space and Equipment

The parties shall adopt the following wording:

The Employer shall convert the small break room in the Transportation Building to a Union office. In addition, it shall provide the Union with: (1) two file cabinets; (2) one desk and desk chair; (3) one table and six chairs; (4) one telephone with an outside line, with the Employer to pay only the installation fee and basic monthly rate; and (5) access to the Employer's FAX machine and photocopier at cost.

2. Bulletin Board Space

The parties shall adopt the Union's proposal.

3. Holiday Scheduling

The parties shall adopt the Employer's proposal.

4. Off-duty Access to the Employer's Facility

The parties shall adopt the Employer's proposal.

By direction of the Panel.



Linda A. Lafferty  
Executive Director

April 24, 1991  
Washington, D.C.