

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of )

DEPARTMENT OF THE ARMY )  
U.S. ARMY ENGINEER DISTRICT )  
HUNTINGTON )  
HUNTINGTON, WEST VIRGINIA )

and )

LOCAL 3729, AMERICAN FEDERATION )  
OF GOVERNMENT EMPLOYEES, AFL-CIO )

Case No. 90 FSIP 236

DECISION AND ORDER

Local 3729, American Federation of Government Employees, AFL-CIO (Union or AFGE) and the Department of the Army, U.S. Army Engineer District Huntington, Huntington, West Virginia (Employer), filed a joint 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).

After investigation of the request for assistance, the Panel determined that the case be resolved through an informal conference by telephone between the parties and Staff Associate Ellen J. Kolansky. The parties were advised that if no settlement were reached, Mrs. Kolansky would notify the Panel of the status of the dispute, including the parties' final offers, and her recommendations for resolving the matter. Following consideration of this information, the Panel would take whatever action it deemed appropriate to resolve the impasse including the issuance of a binding decision.

Mrs. Kolansky conducted the conference call on October 26, 1990; the parties were unable to reach agreement on designated-smoking areas. Mrs. Kolansky reported to the Panel based on the record developed by the parties, and the Panel now has considered the entire record, including her recommendations for settlement.

### BACKGROUND

The Employer oversees locks and dams on the Ohio River and its tributaries, and is charged with flood control projects for a 45,000 square-mile area. The Union represents approximately 205 employees who work as technicians, civil engineers, budget analysts, secretaries, and clerks. The parties are covered by a national agreement as well as a local supplement.

The dispute arose during negotiations over a change in the Employer's smoking policy. Affected employees work in the seven-story Federal building in Huntington, West Virginia.<sup>1/</sup> Currently, employees in the Federal building may smoke in the third and sixth floor lounges (approximately 17-foot square, respectively), an outdoor picnic area, and the designated-smoking area (with five to six tables) of a small canteen on the first floor. Under either party's proposal, smoking would continue in the third floor lounge and the outdoor picnic area, but not in the canteen. Estimates of the total number of smokers in the building range from 10 to 30 percent of the 400-employee workforce.

### ISSUE AT IMPASSE

The parties disagree over the areas, new or continuing, to be designated for smoking.

#### 1. The Union's Position

The Union proposes that designation of the sixth floor lounge for smoking be continued, and would accept the Employer's offer of a designated-smoking area in the basement of the Christie building in lieu of the designated-smoking area in the canteen. In its view, the sixth floor lounge, which is equipped with an air filtration system, is more convenient for smokers who work on the upper floors of the Federal building. It estimates that travel to the Christie building basement area could take up to 5 minutes. Consequently, the performance of smokers might be impaired. Moreover, should smoking on the sixth floor be discontinued, the third floor lounge could become overcrowded, especially in bad weather. The overcrowding could tax the capacity of the lounge's air filtration system to handle the smoke.

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<sup>1/</sup> Approximately 20 employees in the Engineering Division work in the historic Christie building, a former U.S. Post Office, located 50 feet from the Federal building. The basement of the Christie building contains several large classrooms and considerable open space.

## 2. The Employer's Position

Under the Employer's proposal, smoking would be discontinued in the sixth floor lounge and first floor canteen. It would be permitted in the third floor lounge, outdoor picnic area, and basement area in the Christie building. Such designated areas would accommodate smokers by providing several indoor locations for smoking. In addition, the sixth floor lounge is needed for the file clerk and the active files of the Engineering Division. These files, checked out on a daily basis by engineers, currently are stored in the sixth floor conference room. Shifting the files to the lounge would free the conference room for meetings. This is particularly important since space in the building is in short supply.

### CONCLUSION

Having considered the evidence and arguments in this case, we conclude that the parties should adopt the Employer's proposal to resolve the issue in dispute. In this regard, we are persuaded that it represents a positive approach towards reducing the amount of space devoted to smoking in the Federal building, while still accommodating the needs of smokers. We believe that limiting smoking to fewer indoor areas, consistent with the Report of the Surgeon General<sup>2/</sup> on involuntary exposure to second-hand tobacco smoke, should serve to discourage smoking. Moreover, when the amount of potential inconvenience to smokers is weighed against the benefits to be gained from reducing the exposure of all employees to second-hand smoke, progress towards enhanced protection of employees' health outweighs concerns about convenience. Finally, as to possible effects on performance, during the informal telephone conference, the Employer stated it would alert supervisors to the fact that employees who smoke at the Christie building may use somewhat more time to travel to and from that location. Should any problems arise in this regard, they may be addressed through the parties' negotiated grievance procedure.

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2/ The Health Consequences of Involuntary Smoking. A Report of the Surgeon General. DHHS Pub. No. (CDC) 87-8398. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Center for Health Promotion and Education, Office on Smoking and Health, 1986.

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 proceedings instituted pursuant to 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:

The parties shall adopt the Employer's proposal.

By direction of the Panel.



Linda A. Lafferty  
Executive Director

March 28, 1991  
Washington, D.C.