United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of	)	
DEPARTMENT OF HEALTH AND HUMAN SERVICES SOCIAL SECURITY ADMINISTRATION AURORA DISTRICT OFFICE AURORA, ILLINOIS	)	
and	)	Case Nos. 90 FSIP 154 90 FSIP 235
LOCAL 1395, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	)	

DECISION AND ORDER

Local 1395, American Federation of Government Employees, AFL-CIO (Union), filed requests for assistance with the Federal Service Impasses Panel (Panel) to consider two negotiation impasses under section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of Health and Human Services, Social Security Administration, Aurora District Office, Aurora, Illinois (Employer). The Union's requests have been consolidated for the purpose of this Decision and Order.

After investigation of the requests for assistance, the Panel directed the parties to meet informally with Staff Associate Joseph Schimansky for the purpose of resolving the issues at impasse in both cases. They concern office relocation and shift rotation. The parties were advised that if no settlement were reached, Mr. Schimansky would report to the Panel on the status of the disputes, including his recommendations for resolving the issues. Following consideration of this information, the Panel would take whatever action it deemed appropriate to resolve the impasses, including the issuance of a binding decision.

A meeting was scheduled for September 20, 1990, in Aurora, Illinois, but a few days prior to that date, the Employer

informed the Panel that its representative would be unable to attend. Thereafter, on the scheduled date, Mr. Schimansky met only with the Union. The parties also were permitted to file written statements in support of their respective positions. Mr. Schimansky reported to the Panel on the status of the disputes, and the Panel has now considered the entire record in the cases.

BACKGROUND

The Employer's mission is to administer retirement, disability, Medicare, and Supplemental Security Income entitlement programs for the public. The Union represents approximately 19 clerks and claims and service representatives in the Aurora District Office who are part of a nationwide consolidated bargaining unit of about 48,200 employees. The parties' national agreement expires on January 25, 1993.

ISSUES AT IMPASSE

The impasse in Case No. 90 FSIP 154 arose during negotiations for a Memorandum of Understanding (MOU) concerning the relocation of the Employer's facility from a suburban area to a site closer to downtown Aurora, Illinois, which occurred in June 1990. While the parties offer identical wording on some matters, significant disagreement exists in many areas, the most important of which involves (1) parking policy and (2) health and safety at the new location. The impasse in Case No. 90 FSIP 235 arose pursuant to a provision in Article 10, Appendix A, of the parties' national agreement which states that "shift rotations, where necessary, will be worked out at the local level taking into consideration the preferences of employees and the operational needs of the office." In this case the parties also offer identical wording on some matters, but disagree in a number of areas, the most important of which involves whether employees will be permitted to rotate flexitime shifts on a daily, weekly, biweekly, or monthly basis.

Case No. 90 FSIP 154

1. The Union's Position

The Union essentially proposes that: (1) there be no waiver of Union or management rights as a result of the MOU; (2) there be a continuation of prior practices not addressed in the MOU; (3) a copy of the MOU be distributed to all affected unit employees within 30 days of the Panel's decision; (4) local management consider the need for a security guard; (5) after sundown, employees wishing to be accompanied to their cars be accommodated; (6) bargaining-unit employees have access to a private interviewing room with a telephone to meet with Union representatives; (7) the Employer contact the General Services

Administration (GSA) to request that the contract with the lessor of the building be amended so that: (a) all designated parking spaces are marked in compliance with GSA criteria; (b) all non-priority spaces clearly are made available for unit-employee parking on a first-come, first-served basis sufficient to accommodate all unit employees; and (c) employee parking spaces clearly are marked by signs; (8) parking in all other aspects be substantially equivalent to that previously available to unit employees; (9) the Employer make every reasonable effort to provide a bicycle rack for employee use; (10) employee restrooms be accessible to any future handicapped employees, including wheelchair users; (11) position descriptions accurately reflect the principal duties and responsibilities of the position; (12) the Employer provide the Union with reports of health and safety problems received within 1 day of receipt, make reasonable efforts to avoid "sick building syndrome," have an appropriate authority inspect the site's water and water-delivery system within 30 days of the Panel's decision, and make corrections within 24 hours or other arrangements mutually acceptable to the parties; (13) the Employer be required to: (a) ensure an adequate work environment, including maintenance of ventilation within American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) standards, and appropriate illumination, temperature, and noise levels; (b) certify through an accredited testing agency that the building's heating, ventilation, and air conditioning (HVAC) system will be able to provide adequately for the needs of employees; (c) conduct air quality testing; (d) consider the release of employees from duty in the event of power failures; (e) provide lockers for storage of personal items; (f) grant requests by employees for relocation or rearrangement of work areas for health and safety reasons unless this would be unduly burdensome to the Employer; and (g) provide piped-in MUSAK within 30 days of the Panel's decision; (14) it be provided with advance notification, including certain specific information, of any subsequent changes that affect the scope of the agreement, and an opportunity to bargain; (15) it be provided with access to the office word processor and onsite personal computers for representational work, as well as other current or future equipment or facilities available to unit employees; (16) it retain two drawers in the five-drawer filing cabinet, the rolling tub currently provided for Union records, a workable typewriter, and a telephone; and (17) should the Employer reject any terms of the MOU on agency-head review, the parties would begin negotiations within 15 days on all terms of the MOU referred by either side for renegotiation.

Its proposals are fully negotiable and consistent with the parties' national agreement. They also represent reasonable approaches to problems created by the Employer when it required

employees to relocate to what they believe is a less desirable area and facility. Concerning parking, its proposals are an attempt to guarantee that parking privileges are reasonably similar to what was provided at the previous location. Moreover, because the new facility is located in a congested area where street parking is restricted and burdensome, the adoption of its proposals could decrease the risks to employees' health and safety, and minimize their commuting times and costs. Providing parking accommodations similar to what employees enjoyed previously also would significantly enhance morale, benefiting both parties.

With respect to its proposals on health and safety, they are intended to ensure a higher degree of protection in this vital area of employee concern than is currently the case. Their adoption would result in future benefits in productivity and morale. In particular, the Union's proposals regarding accommodations for handicapped employees, and the maintenance of proper ventilation, temperature, illumination, and noise levels, are reasonable in view of the real concerns of employees in these areas.

2. The Employer's Position

The Employer basically would: (1) continue legally binding past practices not in conflict with the MOU; (2) place a copy of the MOU on a bulletin board, and announce this during a staff meeting; (3) in accordance with the national agreement, continue to make reasonable efforts to provide space for private discussions between bargaining-unit employees and a designated Union representative; (4) provide secure, adequate, convenient parking, as currently in effect as of the date of the MOU, to the extent it remains within its control; (5) discuss with the landlord the possibility of his furnishing a bicycle rack; (6) make every reasonable effort promptly to abate unsafe or unhealthy conditions, if it is determined that problems arise; (7) to the extent feasible, maintain illumination and noise levels consistent with the terms of the lease, GSA standards, and the national agreement; (8) maintain ventilation within ASHRAE standards, to be verified annually, and provide a copy of the report to the Union; (9) consistent with the national agreement and existing available resources, continue existing arrangements for the storage of appropriate personal belongings; (10) honor its collective bargaining obligations; and (11) reopen for bargaining any rejected and related portions of the MOU disapproved through agency-head review.

Management believes that the parking arrangements at the new location "are fully adequate." Employees reporting to work "have no problem finding parking in the lot," which consists of 44 parking spaces available to all the tenants of the

building. The Union, on the other hand, would have it reserve a space for each employee. There is "no precedent" for guaranteeing each employee a parking space, and "the labeling of spaces is neither fiscally responsible nor effective." In this regard, the cost of the Union's proposal would be "$110 to $140 per space and would not prevent other people from parking in SSA-designated spaces." Moreover, if such spaces were to be identified, GSA regulations require that "spaces be provided for management and patrons before assignment to employees." Since the lease for the new location requires that only 23 spaces be provided for SSA's use, and employees would be barred from parking in the lot's other spaces, employees actually "could be disadvantaged by the designation of parking spaces."

Turning to other aspects of the dispute, the Employer's position should be adopted because most of the Union's proposals: (1) are outside its duty to bargain because they violate management's rights or have been fully addressed by existing provisions in the SSA/AFGE National Agreement; (2) involve a restatement of the status quo of issues for which management has proposed no change; or (3) "are not consistent with the SSA/AFGE National Agreement in which during the negotiations" the issue was dealt with and fully compromised.

CONCLUSIONS

Having considered the evidence and arguments presented by the parties, we conclude that the adoption of a modified version of the Employer's final offer would balance the equities in the case appropriately. Preliminarily, we note that many of the issues in dispute involve matters previously negotiated by the parties' representatives at the national level. In this regard, the Panel is persuaded that, unless there are clear and convincing reasons to do so, it is important for the maintenance of sound labor-management relations that the results of such bargaining not be undercut through local negotiations. Thus, in the vast majority of the issues, the record shows that the Employer's final offer, which relies heavily on wording previously negotiated in the national agreement, adequately should accommodate employees' health, safety, and comfort requirements, and represents a reasonable response to the needs of employees and management as a result of the relocation. Further, for the most part the record fails to support the adoption of the Union's position through clear and convincing reasons.

Regarding the issues of parking and the inspection of the facility's water and water-delivery systems, however, we hold a different view. With respect to parking, it appears from the record that prior to the relocation bargaining-unit employees were ensured access to secure and convenient parking spaces at

all times during the day, and were not required to park on the street. At the new location, on the other hand, a much smaller number of spaces must be shared with private-sector tenants, occasionally causing employees to park on the street in demonstrably less secure surroundings. For this reason, we are persuaded that the Union's proposal on parking, which essentially requires the Employer to contact GSA to request that its lease be amended so that all non-priority spaces are clearly marked by signs and made available for unit-employee parking on a first-come, first-served basis, should be adopted. The requirement is not unduly burdensome to the Employer and should improve the morale of its employees. Finally, it appears that the water and water-delivery system at the new location have not been inspected for compliance with minimum health and safety standards. Thus, we shall order the adoption of the Union's proposal on this issue, modified so that the inspection shall occur within 30 days of the execution of the agreement, rather than within 30 days of the Panel's decision. This should ensure that employees are adequately protected without violating statutory requirements regarding agency-head review.1/ We further note that it is in the mutual interest of the parties to promote employees' health and safety.

Case No. 90 FSIP 235

1. The Union's Position

The Union essentially proposes that: (1) employees rotate shifts on a daily basis;2/ (2) Shift No. 2 assignments occur in such a manner as to ensure to the greatest extent possible that no employee is disproportionately assigned to Shift No. 2 on Mondays or Fridays; (3) employees be given 7 days' written advance notice of changes in shift assignments; (4) if there

1/ See, for example, American Federation of Government Employees, National Veterans Affairs Council and U.S. Department of Veterans Affairs, Veterans Health Services and Research Administration, Washington, D.C., 39 FLRA No. 90 (March 11, 1991), for a discussion of the Statute's agency-head review requirements in the context of a Panel-imposed provision.

2/ Employees at the Aurora District Office may report for duty anytime within their assigned shift band. Employees on the first shift may begin work between 7:15 and 8:45 a.m. (Shift No. 1), while those on the second shift may begin between 8 and 8:45 a.m. (Shift No. 2).

are an equal number of employees assigned to each shift, "employees assigned to Shift No. 2 will rotate to Shift No. 1, etc."; if the number is unequal, "the Shift No. 1 employee(s) will go to the bottom of the Shift No. 2 list and the appropriate number of employee(s) at the top of the Shift No. 2 list will rotate to Shift No. 1"; (5) employees having the same job description be permitted to exchange shift assignments by notifying management prior to the planned shift exchange; management normally approve the exchange, but may disapprove "only when an assigned responsibility cannot be reasonably interchanged between the two employees"; (6) volunteers be solicited when employees are required to stay beyond their scheduled departure time in the event of the absence of a Shift No. 2 employee on any given day; employees who are "requested" to stay beyond their scheduled departure time "will be compensated either through compensatory time off or through overtime pay, whichever is preferred by the employee and approved by management"; (7) management normally prepare and post shift rosters at least 1 month in advance; (8) the parties meet when needed to reassess the MOU; and (9) copies of the MOU be given to all present and future employees.

A daily shift rotation would allow employees either two or three opportunities per week to enjoy the benefits of working the earlier starting and quitting times permitted under Shift No. 1. Further, the Union has conducted surveys which show that the majority of employees prefer such a rotation because of the additional personal freedom it would afford them. As to the Employer's contentions that a daily shift rotation would be burdensome for supervisors to administer, and confusing for employees themselves to keep track of, it provides documentation indicating that numerous district offices on the West Coast have adopted such schedules. In this regard, there is no evidence that they have had any negative impact on operations. Moreover, the Employer's objections in this regard are overstated when one considers that it has determined that only 16 bargaining-unit employees are to be permitted to rotate shifts.

2. The Employer's Position

The Employer, in essence, proposes that: (1) the following shift rotations be given a trial period of 1 month each in the following order: daily, weekly, single pay period, and monthly; "at the earliest point management considers the operational problems of administering the rotation to be at an acceptable level, management will notify the Union and use that shift rotation"; (2) employees be given advance notice of changes in shift assignments; (3) if an increase in the minimum number for Shift No. 2 is necessary, management notify the Union prior to implementing the change; (4) employees having the same job description be permitted to exchange shift assignments, but be

required to request management to change their shift a minimum of 2 days prior to the planned exchange; management give equal consideration to all requests; (5) management normally prepare and post shift rosters in advance; (6) management fulfill its obligation under Article 4, Section 1, of the National Agreement regarding any changes in shift assignments; and (7) copies of the MOU be given to all employees.

Trial periods of various shifts would permit management "to find the ideal fit of maximizing employee benefit while maintaining operational efficiency." Rotating the reporting time for each employee on a daily basis, on the other hand, "is impractical to administer and illogical in terms of employee benefit." In this regard, it would be difficult for timekeepers and supervisors to monitor late arrivals and determine employees available for late interviews. The advantage of starting early "is negated when it is changed on a daily basis." In fact, "shifts would need to last at least a week" for the benefits of early starting times to be fully realized. With respect to the rest of the Union's proposal, the subject of overtime and compensatory time is not properly before the Panel because it is covered by the parties' national agreement. Moreover, because it seeks a permanent solution to the shift-rotation issue, a reassessment provision in the MOU should not be adopted.

CONCLUSIONS

After considering the evidence and arguments in this case, we find that neither party's proposal would adequately resolve the key issue of the length of the shift-rotation period. On the one hand, the frequency of a daily shift rotation could make it difficult for supervisors to monitor the arrival and departure times of their employees, particularly where daily interview schedules also must be kept. Permitting the Employer unilaterally to determine the matter, however, would be inappropriate. Thus, we shall order the parties to adopt compromise wording establishing a weekly rotation period. We are persuaded that this equitably balances the preferences of employees and the operational needs of the office, as specified in the parties' national agreement. Moreover, the compromise is consistent with the Employer's view that "shifts would need to last at least a week" for employees to fully realize the advantage of starting early.

We also believe that the part of the Union's final offer which establishes a procedure for determining the rotation when the number of employees assigned to each shift is unequal, should guarantee that employees are treated fairly when shifts are rotated. For this reason, we shall order the adoption of a modified version of the Union's procedure consistent with a weekly shift rotation.

Turning to the other issues in dispute, we are convinced that they should be settled on the basis of the Employer's final offer. Among other things, it appears that the parties' representatives at the national level already have negotiated provisions concerning the compensation of employees through compensatory time or overtime if they are required to stay beyond their scheduled departure times. Thus, for the reasons stated in connection with our decision in Case No. 90 FSIP 154, we believe this portion of the Union's final offer should not be adopted. Moreover, the Employer's wording with respect to: (1) advance notice regarding changes in shift assignments, and (2) exchanges of shift assignments, should give management the flexibility necessary to accomplish its mission requirements while also affording employees with adequate forewarning of its decisions in these matters.

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:

Case No. 90 FSIP 154

The parties shall adopt the Employer's final offer, modified as follows:

Article III., Section 1., Parking, shall read:

> The Agency will contact GSA to request the contract be amended to provide for safe parking facilities for all unit employees and to have all designated parking spaces marked in compliance with the normal list for handicapped usage, carpooling, Union use, etc., and so that all non-priority spaces are clearly available for unit employee parking on a first-come, first-served basis sufficient to accommodate all unit employees. Employee parking will be clearly marked by signs.
>
> Management will discuss with the landlord the possibility of his furnishing a bicycle rack.

In addition to the Health and Safety section in Article III, the following wording shall be included:

Within 30 days of the execution of this agreement, the site's water-delivery system shall be inspected by the Water and Sewer Department, Aurora, Illinois, or by some other inspecting agency or firm mutually acceptable to the Union and Management. The water piped into the Office will likewise be inspected. If contaminant(s) above safe threshold limits are found, corrections will be made within 24 hours, or other arrangements, mutually acceptable to the parties, will be implemented.

Case No. 90 FSIP 235

The parties shall adopt the Employer's final offer, modified as follows:

Section I. B., Shift Assignments, shall read:

All employees will be on a rotating shift. The initial shift will be by seniority. Thereafter, all shift rotations will occur on a weekly basis.

Section II. A., Shift Rotations, shall read:

If the number of unit employees assigned to each shift is equal, employees assigned to Shift No. 2 will rotate from Shift No. 2 to Shift No. 1, etc. If the number of unit employees assigned to each shift is unequal, the Shift No. 1 employee(s) will go the bottom of the Shift No. 2 list and the appropriate number of employee(s) at the top of the Shift No. 2 list will rotate to Shift No. 1.

By direction of the Panel.

Linda A. Lafferty
Executive Director

March 18, 1991
Washington, D.C.