

United States of America
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of
DEPARTMENT OF THE NAVY
NAVAL UNDERWATER SYSTEMS CENTER
NEWPORT, RHODE ISLAND

Case No. 90 FSIP 147

and

LOCAL R1-144, FEDERAL UNION OF
SCIENTISTS AND ENGINEERS, NATIONAL
ASSOCIATION OF GOVERNMENT EMPLOYEES

DECISION AND ORDER

Local R1-144, Federal Union of Scientists and Engineers, National Association of Government Employees (Union or FUSE), 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 Department of the Navy, Naval Underwater Systems Center, Newport, Rhode Island (Employer or NUSC).

The Panel determined that the impasse should be resolved through written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the impasse. Written submissions were made pursuant to this procedure, and the Panel has now considered the entire record.^{1/}

BACKGROUND

The Employer conducts research and develops underwater weapons and fire control systems. Its facilities are located primarily in Newport, Rhode Island, but it has other laboratories in Connecticut, Florida, Washington, and Bermuda. The Union represents approximately 1,000 engineers, physicists, mathematicians, and computer scientists, located at the Newport facility. Although the parties have negotiated a number of

^{1/} The Panel notes that the Employer did not submit a rebuttal statement.

memoranda of understanding covering a variety of issues, they have no basic collective-bargaining agreement.

ISSUES AT IMPASSE

The instant impasse arose as a result of negotiations over the selection procedures to be used for filling positions following a particular reorganization; the talks resulted from the settlement of an Unfair Labor Practice charge filed by the Union with the Federal Labor Relations Authority (FLRA). As part of that settlement, the parties also agreed to negotiate over the selection procedures to be used in any future reorganizations.^{2/}

During their negotiations, the parties adopted the definition of reorganization found in the Code of Federal Regulations as a reference for determining when the bidding procedures would become operational.^{3/} The parties are, however, at impasse over proposed exceptions to this definition; stated another way, they are deadlocked over the circumstances under which the selection procedures would not become operational. The parties also disagree over the actual bidding procedures themselves.

1. The Union's Position

The Union proposes the following wording:

(A) Recognizing that certain personnel actions which meet the above definition of reorganization have minimal impact on bargaining-unit employees[,] [t]he following actions are excepted from the procedures found in this agreement[:]

(1) Realignment of employees associated with an organizational change where there is minimal impact on all unit employees, such as, where the duties of all positions remain the same before and after the realignment, and all of the employees continue to report to the same first line supervisor.

^{2/} These parties have, on a previous occasion, been before the Panel with a related issue. In Case No. 89 FSIP 234, the parties were at impasse over the issue of selection procedures to be used for filling vacancies in a particular reorganization. In that case, we issued a Decision and Order outlining the selection procedures to be used to fill positions following that reorganization.

^{3/} 5 C.F.R. section 351.203 (1990) defines "reorganization" as "the planned elimination, addition, or redistribution of functions or duties in an organization."

(2) When no personnel action is being taken and the effects of changes on the employee are minimal.

(E) Bidding

(1) All positions in the new organization are up for bid except as excluded above.

(2) Unit members will not be restricted in the number of positions they may bid for.

(3) For each position the senior qualified bidder will be selected.

(4) After all positions bid for are filled, the remaining positions will be filled with the remaining employees according to qualifications.

The Union proposes broad application of bidding procedures so that senior employees would benefit from any adjustments to either (1) individual positions, or (2) the overall structure of the organization. Under the Union's definition of reorganization, the only organizational changes that would not trigger the application of the bidding procedures would be those having "minimal" impact on bargaining-unit employees. Once the bidding procedures were triggered, all positions in the "new" organization would be up for bid; employees would be permitted to bid on an unlimited number of positions, and the most senior qualified bidder would be selected for each job. According to the Union, adoption of its proposal is necessary to create an "environment conducive to equalizing the distribution of opportunities" and to allow senior employees to gain "additional job experience." It also would prevent the Employer from selecting "fair-haired boys" for desirable promotional opportunities. While the Union concedes that its proposal might be somewhat cumbersome to administer, it argues that such "built-in" administrative difficulties would prevent the Employer from making reorganizations "a way of life."

The Employer's proposal, on the other hand, defines too narrowly the circumstances under which the bidding procedures would become operational, affording the Employer excessive discretion in the filling of positions. By including so many exemptions to the definition of reorganization, the Employer's proposal would impede the "equitable distribution of opportunities" and allow management to award desirable positions on the basis of favoritism. Moreover, the portion of the Employer's proposal requiring employees to "opt in" to the bidding process might be intimidating to some employees.

Overall, it fails to recognize the seniority status of longer term employees and would perpetuate a system of favoritism in the filling of positions.

2. The Employer's Position

The Employer's proposal is as follows:

A. Recognizing that certain personnel actions which meet the above definition of reorganization have no impact, or minimal impact upon bargaining-unit employees, the following actions are excepted from the procedures found in this agreement:

1. Realignment of employees associated with an organization change, where the duties of the position remain the same before and after the realignment, and the employee continues to report to the same first-line supervisor.

2. Realignment of employees associated with an organizational change, where the duties of the position remain the same before and after the realignment, but the first-line supervisor is different and the employee does not object to the realignment.

3. Reassignment of employees associated with an organizational change, where the duties of the position are different after the reassignment, but the employee does not object to the reassignment.

4. Individual realignment or reassignment of an employee not associated with an organization change, or the decision to eliminate a vacant position.

5. Positions in the organizational segment where no personnel action is being taken are also excepted from these procedures.

E. Bidding Procedures:

1. Unit members who are to be realigned to positions with different supervisors or employees who are to be reassigned will inform [P]ersonnel within 3 days of the formal meeting whether they wish their position to be included in the bidding process.

2. Personnel will prepare a list of all positions to be included in the bidding process, and post the

list 1 week before the effective date of the reorganization. Only if they include their positions in the bidding process will employees be able to volunteer for reassignment to another position on the bidding list.

3. For each position, the senior qualified bidder will be selected. After all positions bid for are filled, the remaining positions will be filled with the remaining employees according to qualifications.

4. If an employee volunteers for reassignment to a position other than his or her own on the bidding list, but is not the senior qualified employee, he or she is considered to have volunteered for his or her own position.

5. Applicants may include NUSC application form [number] 12340/1 with their request for reassignment. The position for which the employee is volunteering should be identified by the name of the employee occupying the position prior to the reorganization.

The Employer asserts that its proposal sets forth "a workable set of procedures which are fair to both management and to the members of the . . . bargaining unit." Adoption of its exceptions to the definition of reorganization is necessary to prevent the organization from being "burdened with procedures which unnecessarily interfere with [its] ability to respond to external pressures. . . ." The Employer points out that its proposal would minimize the disruptive effects of a reorganization while maintaining a high level of productivity. Requiring employees to "opt in" to the bidding process would prevent unnecessary bidding by those employees who are satisfied with the position to which they have been assigned. Moreover, its proposed bidding procedures are more detailed and provide greater specificity as to how bidding would be conducted while recognizing the seniority status of longer term employees.

The Union's proposal, in contrast, would have a chaotic effect on the workplace. In this regard, the bidding procedures would be triggered by very minor adjustments to the organization. Since all jobs would be up for bid under a wide variety of circumstances, the workforce would be in a constant state of flux; this in turn would have a detrimental impact on productivity. Moreover, since employees would be permitted to bid on an unlimited number of positions, the Union's proposal would be extremely cumbersome to administer. In the Employer's view, the Union is deliberately proposing a difficult procedure

to discourage it from conducting reorganizations. Also, the Union's bidding procedures are written in general terms and do not provide enough specifics for effective implementation. Overall, the Union's proposal does not recognize the complexities involved in a reorganization and allows employees too much latitude in competing for positions.

CONCLUSIONS

Having considered the evidence and arguments in this case, we find that neither party's proposal would adequately resolve the dispute. In this regard, the Union's proposal would be unduly disruptive to the workplace by requiring all jobs in the "new" organization to be put up for bid whenever minor organizational changes are made. Moreover, allowing unlimited bidding would create serious administrative difficulties while keeping the workforce in a constant state of flux. The Employer's proposal, on the other hand, is needlessly restrictive in the application of the bidding procedures and would allow management too much discretion to reorganize the workforce without adequate deference to the rights of more senior employees.

In light of these deficiencies in each party's position, we conclude that a compromise position would provide the most effective means of resolving this dispute. In this regard, we believe that the parties should adopt the bidding procedures ordered by the Panel in Case No. 89 FSIP 234. Under those procedures, for each bargaining-unit position that continues to exist after any reorganization, the Employer would first solicit qualified volunteers for reassignment. Should the number of qualified volunteers exceed the number of reassignments, those with the most seniority would be selected. If, however, there should be an insufficient number of qualified volunteers, the excess positions would be filled based on inverse seniority. Positions that remain vacant as a result of reassignments under this procedure would be advertised as promotional opportunities. Furthermore, we shall order that these procedures be employed in the same manner as they were during the reorganization involved in the earlier instance, where they were effective.

Turning now to the circumstances under which these bidding procedures would not be activated, we note that the parties have agreed during their negotiations to adopt the definition of reorganization found in the Code of Federal Regulations as a point of reference for determining when the bidding procedures would become operational. It is the proposed exceptions to this definition which are in dispute. Again, we are of the opinion that a compromise position should effectively balance the competing interests of the parties. To that end, we shall

order, consistent with the agreed-to definition of reorganization, that the aforementioned bidding procedures shall not become operational when no personnel action is being taken and the effects of the reorganization on the employees are minimal. We are persuaded that this should ultimately result in a more equitable distribution of job opportunities without being overly burdensome to the Employer. Any disagreements that may arise as to when the effects of a reorganization on employees are minimal should be resolved through the negotiated grievance procedure.

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:

1. Bidding Procedures


The parties shall adopt the same selection procedures for filling vacancies after a reorganization as were ordered by the Panel in Case No. 89 FSIP 234. The procedures shall be implemented in the same manner as they were following the reorganization involved in that case.

2. Circumstances Under Which the Procedures Will Not Be Operational

The parties shall adopt the following compromise wording:

Consistent with the above definition of reorganization, the procedures in this agreement shall not apply when no personnel action is being taken and the effects of changes on the employees are minimal.

By direction of the Panel.


Linda A. Lafferty
Executive Director

December 19, 1990
Washington, D.C.