

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)
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DEPARTMENT OF THE AIR FORCE)
MacDILL AIR FORCE BASE)
MacDILL AFB, FLORIDA)
)
)
and) Case No. 90 FSIP 217
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LOCAL 153, NATIONAL FEDERATION)
OF FEDERAL EMPLOYEES)
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DECISION AND ORDER

Local 153, National Federation of Federal Employees (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 Department of the Air Force, MacDill Air Force Base, MacDill AFB, Florida (Employer).

The Panel determined that the dispute, which concerns a smoking policy, should be resolved through the issuance to both parties of an Order to Show Cause why the Panel should not mandate the same provisions as those imposed by its Decision and Order in Department of the Air Force, MacDill Air Force Base, Tampa Florida and Local 153, National Federation of Federal Employees, Case No. 90 FSIP 58 (April 27, 1990), Panel Release No. 294 (MacDill I) to resolve the dispute.^{1/} After considering the parties' responses to its Order to Show Cause,

^{1/} In MacDill I, which concerned a smoking policy within the 23 buildings under the control of the Civil Engineering Squadron, the Panel concluded that the health of all employees is best protected by eliminating the presence of tobacco smoke in buildings. It ordered the parties to adopt the employer's proposal modified to provide for outdoor designated smoking areas selected by the employer which are "reasonably accessible to employees" and "provide protection from the elements."

the Panel would take whatever action it deemed appropriate to resolve the impasse. Responses were made pursuant to these procedures and the Panel has considered the entire record.

BACKGROUND

The Employer is a training wing for the Department of the Air Force. The Union represents approximately 750 nonprofessional General Schedule and Wage Grade bargaining-unit employees who maintain ground and flight safety. The parties' term agreement is in effect until February 1992.

This dispute arose during negotiations over a smoking policy in Building 242 where some 35 employees are stationed; the building is not covered by the smoking policy which the Panel ordered the parties to adopt in MacDill I. Smoking initially was banned inside this building when it was determined that an employee who works there was experiencing health problems due to hypersensitivity to second-hand smoke. Only one bargaining-unit employee assigned to Building 242 smokes, and he has agreed to refrain from doing so inside the building in order to accommodate this employee.

ISSUE

Whether the Panel should order a smoking policy in Building 242 different from what it ordered in its Decision and Order in MacDill I.

1. The Employer's Position

The Employer proposes to prohibit smoking in Building 242 and designate as the smoking area for the building, a covered picnic area approximately 75 yards from it. Since Building 242 is targeted for destruction, pending the relocation of personnel, to expend funds on the construction of an outside covered area closer to the building would be a waste of financial resources. The picnic area, on the other hand, already has been established as a smoking area and is being used by employees in nearby buildings. Finally, the Employer notes that since there is only one bargaining-unit employee assigned to the building who smokes, any inconvenience caused by using the picnic area for smoking would be minimal.

2. The Union's Position

The Union proposes that the Employer designate an area outside of Building 242 for smoking that (1) is reasonably accessible (within 25 feet of the existing building); and (2) provides protection from the elements (heat, cold, wind, rain,

etc.). Counseling and rehabilitation^{2/} should be provided to those who desire to quit smoking, at no cost to employees and during regular working hours.

Its proposal conforms with the Panel's decision in MacDill I. Therefore, it provides a reasonable accommodation for smokers while protecting the rights of both smokers and nonsmokers.

CONCLUSIONS

Having considered the evidence and arguments in this case, we conclude that the parties should adopt the Employer's proposal. In reaching this decision we note that the Union's proposal would require construction of a designated-smoking area with amenities that would be rather costly. Moreover, given that Building 242 may not be in existence much longer, it would be a waste of resources to construct a smoking shelter within 25 feet of the building and which provides protection from heat, cold, wind, and rain, especially when suitable accommodations are nearby. In our view, employees who smoke are entitled to a "modicum of protection"^{3/} from the elements which the covered picnic area provides. It has never been the Panel's intent in any of its decisions concerning outside designated smoking areas to require the construction or modification of a structure that would provide complete protection from the elements, unless the accommodation was offered by the employer.^{4/} Finally, since there is but one bargaining-unit employee in the building who is a smoker, the relative inconvenience of using a designated smoking area 75 yards from the worksite would have a minimal effect on bargaining-unit employees stationed in Building 242.

^{2/} The Union offered no evidence in support of this aspect of its proposal.

^{3/} Department of Transportation, U.S. Coast Guard Yard, Curtis Bay, Maryland and Local 2371, American Federation of Government Employees, AFL-CIO, Case No. 90 FSIP 180, (October 24, 1990), Panel Release No. 300.

^{4/} See Id.; MacDill I; Department of Veterans Affairs, Veterans Health Services and Research Administration, Washington, D.C. and National Veterans Administration Council, American Federation of Government Employees, AFL-CIO, Case No. 89 FSIP 198, (April 27, 1990), Panel Release No. 294; Department of the Air Force, Scott Air Force Base, Scott Air Force Base, Illinois and Local R7-23, National Association of Government Employees, Case No. 89 FSIP 163 (January 11, 1990), Panel Release No. 289.

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 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:

The parties shall adopt the Employer's proposal.

By direction of the Panel.

Linda A. Lafferty
Executive Director

December 20, 1990
Washington, D.C.