

In the Matter of

DEPARTMENT OF AGRICULTURE  
ANIMAL PLANT HEALTH INSPECTION  
SERVICE  
PLANT PROTECTION AND QUARANTINE  
MOORESTOWN, NEW JERSEY

and

NATIONAL ASSOCIATION OF AGRICULTURE  
EMPLOYEES

Case No. 99 FSIP 111

#### ARBITRATOR'S OPINION AND DECISION

The Department of Agriculture, Animal Plant Health Inspection Service, Plant Protection and Quarantine, Moorestown, New Jersey (Employer or Agency) 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 between it and the National Association of Agriculture Employees (Union). After investigation of the request for assistance, the Panel asserted jurisdiction and directed that the parties' dispute, concerning ground rules for negotiations over five separate changes proposed by the Employer which affect how employees in the Northeast Region earn overtime, be submitted to the undersigned for mediation-arbitration.

Accordingly, on November 4 and 5, 1999, the undersigned met with the parties at the Panel's offices in Washington, D.C. During intense mediation, the parties were able to resolve all the ground rules, save two. And, they agreed that the ground rules would apply to the states in the former Northeast Region (see attached signed tentative agreement entitled "Interim Generic Ground Rules for Northeast Region"). When the parties were unable to reach agreement on those two ground rules, the undersigned heard the matters in Arbitration per the Panel's direction. The parties were afforded the opportunity to provide opening statements, pertinent evidence, testimony, and completed their cases with oral argument. The record in this matter is now closed.

#### BACKGROUND

The Employer's mission is to protect American agriculture

through the inspection of shipments and passengers at ports of entry to determine whether prohibited meats, produce, and plants are being brought into the United States. The Union represents approximately 1,200 employees in a nationwide bargaining unit who hold positions such as plant protection and quarantine officer, technician, and identifier (an employee who identifies insects), who are stationed at every port of entry into the country. The parties are governed by the terms of a master collective-bargaining agreement (MCBA) which was to have expired in 1989, but has been rolled over until a successor agreement is implemented. For the past 3 years, the parties at the national level have been attempting to renegotiate the MCBA.

### ISSUES

The parties basically disagree over: (1) the number of ground rules which may be negotiated locally by the parties, in addition to the negotiated generic ground rules; and (2) how the travel and per diem expenses of Union negotiators from outside the port where bargaining occurs will be paid, and whether Union negotiators from outside what was formerly the Northeast Region will have expenses paid.

1. Ground Rule #3 - Local Negotiations Over Additional Ground Rules

a. The Union's Position

The Union proposes the following wording:

Despite the general applicability of these generic local ground rules to all local negotiations in the Northeast Region as provided above, each local union and management negotiating team shall have the right to propose and negotiate additional ground rules (*i.e.*, provisions not expressly covered by these generic ground rules), not to exceed six (6) in number, as well as the obligation to negotiate with the other party those provisions in these generic ground rules expressly reserved for subsequent local negotiations or subsequent mutual agreement.

Regarding the number of additional ground rules, the Union argues that it cannot foresee every possible situation over which the parties may wish to negotiate locally, what all the local needs are, nor the circumstances in which such negotiations will take

place. Further, in assessing a number of sets of ground rules for local negotiations, it could see that issues such as lunch periods, child care, dates of the negotiations, method of service of notice to negotiate, non-waiver of management's rights, etc., are not addressed in the agreed upon ground rules.

Therefore, the Union proposes that up to an additional six (6) ground rules, not expressly covered by their agreement, may be negotiated locally.

b. The Employer's Position

The Employer proposes that "if unusual circumstances exist, either party may negotiate, absent mutual consent, no more than two amendments to the ground rules." It argues that its interest is to have a set of ground rules for all local negotiations, so that the parties don't spend months or years working out the ground rules, up to and including impasse procedures. The Employer insists that the Union has had ample opportunity to address generic ground rules both in direct negotiations and in mediation while at the Federal Mediation and Conciliation Service and before the undersigned at the Panel.

It urges the Arbitrator to adopt its position of no more than two (2) more ground rules, unless mutually agreed to by the local parties to negotiate others.

OPINION

While the parties negotiations over ground rules have been sporadic, nonetheless, they have been in negotiations since August 1998, a full year and 3 months. However, in mediation under the auspices of the Panel, they were able to agree to several basic principles and many generic ground rules for the states which made up the former Northeast Region. The parties were provided full opportunity to work on the ground rules, and in order to facilitate agreement they opened and revised rules which had been tentatively agreed to while in the mediation phase of this proceeding.

In the opinion of the undersigned, they have had the opportunity to bring forward, discuss, and consider the generic ground rules. Moreover, these generic ground rules are in effect only until they are superceded by the MCBA, which the parties are currently negotiating in Seattle, Washington. So, if they find that they agree to generic ground rules and there are other generic

areas to be added, they can do so at those National negotiations.

Having listened to both of the parties' concerns, while two may be too few to address local needs, six probably leaves open too many and opens the door to protracted negotiations over the ground rules. Furthermore, the portion of management's wording that refers to "unusual circumstances" is ambiguous and creates the potential for grievances over the interpretation of the language. Therefore, the Arbitrator finds that a compromise of three provides for local needs which are not already addressed, yet limits both parties and will serve to assist in expediting the parties getting to the merits of any local issues to be negotiated.

2. Ground Rule #19 - Payment of Travel and Per Diem Expenses for Outside Negotiators

a. The Union's Position

The following wording is proposed by the Union:

Should Management elect to have negotiators come from outside the port where negotiations are to occur, the Union shall be entitled to have an equivalent number of negotiators from outside the port, each of whom shall be at full Government travel (pursuant to AD 202) and per diem, consisting of full hotel and full meals and incidental expenses (M&IE) for the date of travel to the negotiating site and for the first full day of negotiations. Thereafter, the Agency shall pay the hotel portion of the per diem and one half the M&IE portion for each outside Union negotiator.

The Union argues that if it is necessary to bring in outside negotiators to the local negotiations, it must not be limited in whom it can choose by only having expenses paid by the Agency for representatives from the Northeast region, or for only one round trip. The outside negotiators should have knowledge of the particular issues in dispute. Because many complex issues may be negotiated at the local level, some outside negotiators will have varying levels and areas of expertise and the Union will want to bring in their most knowledgeable members.

Moreover, the Agency is not limited to whom they can bring in, and the Agency controls whether or not any outside negotiators are at the table.

Next, the Union points out that this is a relatively small Union with limited resources and insists that it cannot afford to pay anymore than one half of the M&IE for its outside negotiators, and that amount only after the first day of negotiations. In other words, potentially a day of travel and the first day of negotiations should be paid in total by the Agency.

b. The Employer's Position

The Employer's proposal is as follows:

Should the Employer elect to have negotiators come from outside of the Port, the Union will be entitled to have an equivalent number of negotiators from outside the Port. The Employer will pay the travel costs for one round trip, unless otherwise mutually agreed (pursuant to AD 202), for such Union representatives, to the extent they come from within the Northeast Region. The Agency will pay lodging costs in accordance with Federal Travel Regulations. The Union will pay all M&IE costs.

Regarding the outside negotiators, the Employer argues that its responsibility for paying for the Union's outside negotiators should be only for negotiators from the Northeast region, and only for one trip (unless it is mutually agreed that management pay for additional trips), and that the Union should pay for all the meals and incidental expenses. This would put added pressure on the parties to negotiate efficiently and conclude the local negotiations in an expeditious manner.

OPINION

Regarding Ground Rule #19, the Agency seeks to limit its monetary liability by having the Union pay travel expenses after one round trip even though, if the matters were not concluded on the first trip, management could continue to send in outside negotiators at Agency expense and the Union would have to pay all the expenses for their outside negotiators. This proposal has the potential of creating an uneven playing field and undermining the Union's bargaining ability. Moreover, because there would have to be mutual agreement to pay for additional trips for the Union's outside negotiators, the potential for disagreement on this matter would only serve to create more conflict and protracted negotiations.

Therefore, wording shall be imposed specifying that if the Agency chooses to send in outside negotiators, the Union's outside negotiators would not have to be from the Northeast Region to have their travel and lodging expenses paid by the Agency. And, each time outside Agency negotiators are sent in to a Port, the Union's outside negotiators are entitled to reimbursement for travel.

The final issue then is to determine the amount of M&IE for which the Union will be responsible for each of its outside negotiators. Since the Agency is paying both travel, pursuant to AD202, and lodging, in accordance with the Federal Travel Regulations, which are the most costly of the expenses, the Arbitrator finds that the Union should pay the meals and incidental expenses for their outside negotiators.

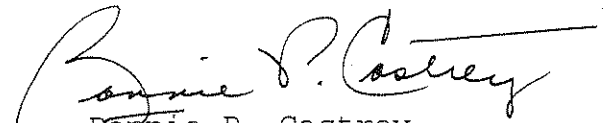
#### DECISION

1. Ground Rule #3 - Local Negotiations on Additional Ground Rules

If these ground rules do not expressly address an issue, the parties may negotiate up to three (3) additional ground rules.

2. Ground Rule #19 - Payment of Travel and Per Diem Expenses for Outside Negotiators

If the Employer elects to have negotiators from outside the Port, the Union will be entitled to have an equal number of negotiators from outside the Port. The Employer will pay the travel costs pursuant to AD 202 for such Union Representatives and the lodging costs in accordance with the Federal Travel Regulations. The Union will pay for the meals and incidental expenses of its outside negotiators.

  
Bonnie P. Castrey  
Arbitrator

December 6, 1999  
Huntington Beach, California