

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

FEDERAL DEPOSIT INSURANCE CORPORATION
EAST HARTFORD, CONNECTICUT

and

CHAPTER 241, NATIONAL TREASURY
EMPLOYEES UNION

Case No. 99 FSIP 13

DECISION AND ORDER

The Federal Deposit Insurance Corporation, East Hartford, Connecticut (Employer or FDIC) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and Chapter 241 of the National Treasury Employees Union (Union or NTEU).

Following an investigation of the request for assistance, the Panel eventually determined that the impasse, arising from bargaining over the impact and implementation of the closing of the Middletown (Connecticut) Field Office and relocation of bank examiners to the East Hartford Field Office, should be resolved through the issuance of an Order to Show Cause. In this regard, the Panel directed the parties to submit written statements showing cause why it should not impose wording to resolve their dispute that is similar to what representatives of FDIC and NTEU had voluntarily agreed to in a previous case.^{1/} After considering the

^{1/} The parties were referred to the following wording, which was agreed upon by representatives of FDIC and NTEU on January 23, 1998, as part of an overall settlement of a previous impasse involving the same issue in similar circumstances:

entire record, the Panel would then issue a binding decision to resolve the dispute. The parties submitted written statements pursuant to this procedure, and the Panel has now considered the entire record.^{2/}

BACKGROUND

The Employer is a Government corporation whose primary mission is to examine banks for safety and soundness, and to insure deposits. The Union represents approximately 300 bank examiners at Corporate Grades (CG) -5 through -12 in the Boston Region, one of 8 within FDIC. These employees travel to banks to audit loan portfolios and accounting practices, and file reports rating the relative safety of banks. They spend about 20 to 25 percent of their time at their local field offices, and are governed by FDIC General Travel Regulations (GTR), which were negotiated by the parties at the national level. FDIC and NTEU recently implemented a nationwide collective bargaining agreement (CBA) covering the bank examiners in all 8 regions. The parties also have established a national level Senior Executive Committee (SEC).^{3/}

The "stay-out" rule will be preserved to be the "stay-out" rule distance in effect for each employee prior to the consolidation of the Dallas and Ft. Worth Field Offices for those employees who were previously within 30 air miles of the Ft. Worth or Richardson offices, and are now more than 30 air miles from the Dallas Field Office. The 30 air mile stay-out rule, from their residence, shall be effective only for so long as the employee remains in his or her present residence. The rule will not apply to travel to the Dallas Field Office.

- ^{2/} Supplementary information was submitted by both parties as the result of conference calls which were conducted with the Panel's staff following receipt of their written statements.
- ^{3/} The SEC meets quarterly and consists of high level FDIC managers and NTEU representatives. The SEC is chartered to utilize joint problem-solving techniques and consensual decision-making processes to attempt to resolve issues in a

As explained by the Employer:

The "stay-out" rule - is that an employee is not authorized to remain at a temporary location, obtain lodging and per diem ("stay out") unless the location of the temporary assignment is outside the employee's D[efined] C[ommutable] A[rea], except in limited circumstances.^{4/}

When the Middletown Field Office closed in early 1997, and employees were reassigned to the East Hartford Field Office, the

non-adversarial manner. As relevant to this case, the SEC's Travel and Relocation Subcommittee, when asked by the local parties to review the matter at issue, agreed that negotiations over the application of any "transition rule" (or "stay-out" rule) to employees affected by field office closings should be conducted at the local level.

4/ "Defined Commutable Area" (DCA) is defined in the GTRs as follows:

Each employee has a defined commutable area that is described as all the area inside a circle with a radius equal to 1 mile more than the actual distance between the employee's residence and the employee's official station. The employee's residence will always be at the center of the circle. All distances must be determined using direct (air) miles. The minimum radius for the circle defining the employee's commutable area is 30 miles and the maximum radius is 60 miles. When the distance between the employee's residence and the official station exceeds the maximum radius, the employee's defined commutable area is described by a circle using the maximum radius. For the purpose of determining authorized FDIC reimbursement, a circle with a 60-mile radius defines the maximum reasonable commutable area for any employee.

DCAs of a number of employees changed. At that time, the Employer agreed to allow each employee's DCA for the Middletown Field Office temporarily to continue to apply until the SEC's Travel and Relocation Subcommittee had reviewed the matter, and impact-and-implementation bargaining with the Union was completed. This means that the affected employees are entitled to receive reimbursement for staying overnight at a hotel when the distance traveled exceeds their previous DCA, including trips to the East Hartford Field Office.^{5/}

ISSUE AT IMPASSE

The parties disagree whether affected employees should continue to have the same DCA as they had prior to their relocation to the East Hartford Field Office.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes that "the FDIC continue to grand father the affected Middletown Connecticut employees to the stay-out rule when they report to the field office." The Panel "should give little weight if any" to the settlement Memorandum referred to in the Order to Show Cause because the circumstances surrounding the Middletown move are "completely different" than those involved in the previous case. Among other things, the Middletown relocation occurred prior to the one in that case, and the "facts infer" that FDIC held the negotiations in Middletown in abeyance so it could "cherry pick" its easiest negotiations first. In addition, NTEU had just achieved recognition for the employees in the previous case, and "they were not subject to the compensation agreement,

^{5/} Only three unit employees are currently affected by the dispute. The parties have submitted cost data regarding employees' use of the stay-out rule since January 1997. The distance between the Middletown and East Hartford Field Offices is 17 highway miles. The parties agree that at this time it appears highly likely that the East Hartford Field Office will relocate in June 2000.

which embodies the stay-out rule, nor did they reap its benefits."^{6/} The "parochial concerns" addressed by the parties in that case were not issues in the Middletown negotiations, and "carried sufficient weight to be incorporated in the Memorandum and may have effected a resolution in the stay-out rule quite differently than would be resolved in Middletown, CT."

Its proposal should be adopted because there is a long-standing practice requiring the Employer to grand father employees affected by a relocation under the stay-out rule. In 1983 when the Albany and Rochester (New York) Field Offices were closed "all the affected employees were grand fathered." There are three additional instances in the New England area since 1985 where affected employees continued to have the same DCAs they had prior to the relocations of their field offices. Its existence is further confirmed by a recent arbitral decision in which the Arbitrator relied upon "this past practice of grand fathering" in rendering her Opinion and Award. The 1995-1996 and 1997-1999 FDIC-NTEU Compensation Agreements also articulate "not only the intent of the parties to grandfather, but also the long-standing practice in the FDIC of grand fathering," because they contain provisions stating that "the Employer agrees to maintain the current FDIC benefits plans at existing levels," and that "all other economic benefits and practices not referenced in this agreement will be maintained." The fact that the "SEC committee determined to temporarily grand father the affected employees so that the matter could be addressed at the national level" provides further support for the Union's position that "the current benefit practice" should remain intact and only be changed through national level negotiations.

The cost of continuing the stay-out rule for the three affected employees "has been very slight," approximately \$600 over the past 6 months, and is offset by the "windfall savings" that the FDIC has reaped because they live close to "where a large majority of bank assets reside." Because of their proximity, employees are less likely to take advantage of the stay-out rule when servicing a bank which is within commuting distance. In any event, the cost of the Union's proposal is minor in view of "the burden of greater

^{6/} The Union refers to the 1997-1999 FDIC-NTEU Compensation Agreement.

traveling time" imposed on employees because of the relocation to East Hartford. One of them, for example, now travels 1½ hours each way when reporting to the East Hartford Field Office. The nature of field office work, which requires longer working days and adherence to strict deadlines, justifies a continuation of the previous DCA so that employees can "break up the stress induced from repetitively long workdays and excessive travel."

2. The Employer's Position

The Employer proposes the following wording:

The "stay-out" rule will be preserved to be the "stay-out" rule distance in effect for each employee prior to the move of the Middletown Field Office to East Hartford, Connecticut, for employees who were within 30 air miles of the Middletown Field Office and are now more than 30 air miles from the East Hartford Field office. The 30 air miles stay-out rule, from their residence, shall be effective only for so long as the employee remains in his or her present residence. The rule will not apply to travel to the East Hartford Field Office. The "stay-out" rule for Jennifer Bain will be preserved to be the "stay-out" rule distance in effect for her prior to the move to the Middletown Field office to East Hartford, Connecticut, so long as she remains in her present residence, except the rule will not apply for travel to the East Hartford Field Office.

This wording is almost identical to what was proposed by the Panel in its Order to Show Cause, except for changes which reflect the name and location of the field office in question, and the last sentence, which is intended to permit one of the affected employees to continue to receive lodging expenses for overnight stays when working at banks located outside her previous DCA. The Union's statements notwithstanding, "generally" a "field office move does not result in the grand fathering of employees," so the contention that the Union's proposal merely continues a long-standing past practice is inaccurate. More specifically, there were 12 field office relocations at FDIC in 1998, and none of them resulted in the grand fathering of employees under the stay-out rule so they could receive hotel expenses when working at their new field offices. Although the provision agreed to by the parties in the

previous case "is still the exception with respect to field office moves," the Employer is nevertheless "willing to apply it here," because it appropriately would deny employees the right to receive hotel expenses when traveling to the East Hartford Field Office.

The FDIC seeks to apply its travel reimbursement regulations, which generally provide more favorable benefits than received by employees at other Federal agencies, "uniformly, treating all employees similarly situated the same." In this connection, employees understand that the location of field offices are subject to change, and that this "may impact the travel reimbursement provided to the employee." For over 2 years, employees affected by the Middletown relocation "have been reimbursed for their travel expenses as though the field office had not been moved," including payments for overnight stays at the East Hartford Field Office. There is "little justification" for extending the grand fathering arrangement, which was intended to be temporary, "beyond the more than 2 years it has already been in effect." Finally, the immediate termination of this practice also would save money: the total cost of travel reimbursements for the three affected employees while working at the field office since the grand fathering began in January 1997 has been over \$4,000.

CONCLUSIONS

After carefully considering the evidence and arguments presented by the parties, we are persuaded that the Employer's proposal provides the more reasonable approach for resolving the impasse. In essence, this dispute revolves around whether employees should be reimbursed for hotel expenses when traveling to the field office. The voluntary agreement reached by the parties in the previous case, which was relied upon by the Panel in fashioning the Order to Show Cause, expressly prohibits such reimbursements. In our view, the Union has failed to show cause why the solution reached in that case should not be imposed to resolve the parties' dispute. In this regard, the more than 2 years during which the employees affected by the relocation have been entitled to receive such benefits appears to have provided an adequate adjustment period for the additional 17 highway miles they have had to travel no more than 25 percent of their time.

In particular, we note that the Union's argument that the compensation agreements reflect the intent of the parties at the

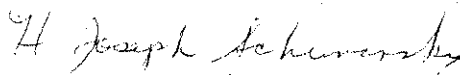
national level to grandfather employees under the stay-out rule appears to be undercut by the actions of the SEC's Travel and Relocation Subcommittee, which specifically referred the matter for local level negotiations.^{7/} In addition, its argument that the FDIC has saved money because of the proximity of the affected employees to the banks where they work is a function of where they happen to reside, and we cannot discern its relevance to the merits of the issue at impasse. Finally, we approve of the Employer's modification of the wording proposed in the Order to Show Cause because it fixes an unintentional defect which would have prohibited one of the affected employees from continuing to receive hotel expenses for overnight stays when working at banks located outside her previous DCA. Accordingly, for the reasons provided above, we shall order the adoption of the Employer's proposal.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt the Employer's proposal.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

March 11, 1999
Washington, D.C.

^{7/} On a related matter, we are unable to determine on the basis of the record developed by the parties whether there is a "long-standing past practice" within FDIC of permitting employees to retain the same DCAs as they had prior to the relocations of their field offices. In our view, however, a definitive answer to that question is unnecessary to resolve the parties' dispute.