United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF COMMERCE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION NATIONAL MARINE FISHERIES SERVICE NORTHEAST FISHERIES SCIENCE CENTER WOODS HOLE, MASSACHUSETTS and LOCAL 231, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case Nos. 05 FSIP 53

DECISION AND ORDER

Local 231, American Federation of Government Employees, AFL-CIO (Union), 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 the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service, Northeast Fisheries Science Center (NFSC), Woods Hole, Massachusetts (Employer or NFSC).

After investigation of the request for assistance, which involved nine articles in the parties' initial collective bargaining agreement (CBA), the Panel determined that they should resume negotiations, on a concentrated schedule, with the assistance of the Federal Mediation and Conciliation Service (FMCS). Thereafter, if any articles remained unresolved the parties were instructed to submit to the Panel their final offers and supporting statements of position. After considering the entire record, the Panel would resolve the dispute through the issuance of a *Decision and Order* in which it selects between the parties' final offers, on an article-by-article basis, to the extent they otherwise appear to be legal. Pursuant to this

procedural determination, the parties resumed mediation with FMCS on August 16 and 17, 2005, during which one article was resolved. The parties submitted their final offers and supporting statements of position on the remaining eight articles. The Panel has now considered the entire record.

BACKGROUND

The NFSC, which is the research arm of the National Marine Fisheries Service, supplies information for making and managing fish stock allocation decisions, and researches fish stock and related habitat issues pertaining to wild fish from Cape Hatteras to Canada. In 2001, the Union was certified as the exclusive representative of the bargaining unit; it represents approximately 60 professional and non-professional employees who work in the Employer's laboratories in Woods Hole, Massachusetts; Narragansett, Rhode Island; and Sandy Hook, New Jersey. Typical bargaining-unit positions are fisheries biologist, oceanographer, computer specialist, physical science technician, librarian, chemist, and biological science technician.

ISSUES

The following eight articles are before the Panel for resolution: (1) Union Facilities; (2) Employee and Representative Travel; (3) Union Representatives and Official Time; (4) Grievance Procedure; (5) Details and Temporary Promotions; (6) Employee Health and Fitness; (7) Employee Recognition; and (8) Research Cruises and Staffing.

POSITIONS OF THE PARTIES [1/]

1. Union Facilities

a. The Union's Position

In essence, the Union proposes that it be provided with a Union office at the duty location of the local Union President, which would include standard office furnishings, a locking filing cabinet, and a telephone with conferencing capability and

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1/ The descriptions of the parties' final offers presented below are only intended to summarize their major differences, and are not meant to be exhaustive. For the full test of the final offers, see Appendix A - the Union's Final Offers, and Appendix B - the Employer's Final Offers.

an FTS line. Also, the Union would be permitted to use, for representational purposes only, the Employer's metered mail system. The Union contends that a designated Union office is needed, rather than having the local Union president utilize his current workstation, because most workstations typically are in open space or cubicles and a separate Union office would ensure privacy, confidentiality and sufficient space for grievance committee meetings with proximity to Union records. Access to metered mail would provide the Union with a means by which to communicate with bargaining-unit members when it would not be feasible to do so by e-mail or through other forms of communication.

b. The Employer's Position

The Employer opposes the designation of a separate Union office, and Union access to its metered mail system, because the Union already has the facilities and equipment it needs to represent employees. In this regard, the Employer has agreed to provide all Union representatives with "reasonable access to space suitable for private calls and/or meetings." Furthermore, Union representatives are to be permitted, at no cost to the Union, the use of their assigned office space, long distance telephone service, voice mail, computer with standard software, printer, e-mail, Internet access, a lockable file cabinet (one per duty station), and the use of the inter-office mail system. Since the bargaining unit is relatively small, it may not be cost effective to maintain a separate Union office. Moreover, the Union has not demonstrated why e-mail access and the inter-office mail system are not sufficient for it to communicate with bargaining-unit employees.

CONCLUSIONS

Having fully considered the parties' positions, we find that the Employer's proposed article provides the more reasonable alternative for resolving the matter. The record reflects that the Employer already has agreed to provide accommodations for the Union that include space for making private calls and convening meetings; additionally, Union representatives are to be permitted the use of their offices and office equipment for conducting representational activities. In our view, these accommodations make it unnecessary for the Union to be provided with a dedicated office. Furthermore, the Union's proposal has the added drawback of requiring the Union office to be relocated any time an employee in a different geographical area becomes the local Union president. As to the

Union's proposal for access to the Employer's metered mail system, it has failed to demonstrate why the current communication methods, including e-mail and telephone, are insufficient to meet its needs. For these reasons, we shall order the parties to adopt the Employer's final offer on this article.

2. Employee and Representative Travel

a. The Union's Position

The Union proposes that video conferencing only be used for employee grievance meetings and arbitration hearings to the maximum extent possible to reduce the need for travel, and that telephone communication "may be used" during Union/Employer grievance discussions. With respect to travel and *per diem* expenses, the Employer would assume responsibility for those costs if they are reasonable and "associated" with Employer and Union grievance meetings, arbitration hearings, midterm negotiations, and grievance investigations for bargaining-unit representatives, witnesses and grievants. Employer and Union grievance meetings, arbitration hearings and midterm negotiations would be held at the duty location of the Union president unless the parties agree otherwise.

Bargaining face-to-face is more conducive to reaching resolution than bargaining via video conferencing or through telecommunications. Cost should not be the overriding concern when it comes to determining whether meetings and hearings should be held at the duty location of the Union president; holding those meetings and hearings at the Union president's worksite would help reduce the need for travel and time spent away from the workplace. Having the Employer pay travel and *per diem* expenses "associated" with certain representational matters is appropriate because the Employer was successful in persuading the Federal Labor Relations Authority (FLRA) that a geographically disbursed bargaining unit covering employees in three states was more appropriate than the unit petitioned for by the Union which included only a single location. Therefore, the Employer should pay for the bulk of the travel expenses incurred by the Union when representing employees in three separate locations.

b. The Employer's Position

The Employer proposes that both telephone and video conferencing should be used to the maximum extent possible for

official grievance meetings, arbitration hearings and negotiation sessions. When it is cost effective to do so, meetings and hearings would be held in locations other than those specified in the article.[2/] Furthermore, the Employer would pay reasonable travel and *per diem* costs for "necessary" bargaining-unit representatives, bargaining-unit witnesses and grievant(s) to attend grievance investigations and meetings, arbitration hearings and negotiation sessions.

Overall, the article it proposes provides a reasonable, clear, and cost-effective method for dealing with employee and representative travel without diminishing the Union's representational capabilities. Employing the use of video conferencing and telephones may reduce greatly travel costs that otherwise would be incurred during the processing of grievances, arbitration hearings and negotiations. There is no reason to believe that the quality of those "meetings" and discussions would be jeopardized through a means of communication that is other than face-to-face. Moreover, using telephones and video conferencing may serve to expedite meetings, hearings and negotiations. As to grievance meetings, arbitration hearings and mid-term negotiations, cost should determine their location, particularly since the Employer would be paying for the bulk of the travel and *per diem* expenses associated with these activities.

CONCLUSIONS

After giving careful consideration to the arguments presented by the parties, on balance we are persuaded that the Employer's final offer provides the better basis for resolving the dispute over this article. In our view, it would allow the Government to reduce some of the travel expenses it might otherwise incur without jeopardizing the Union's ability to represent employees during grievance meetings, arbitration hearings and collective bargaining. Furthermore, the increased

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2/ The parties already have agreed in this article that employee grievance meetings "normally are to be held at the present duty station of the grievant;" they also appear to agree that Employer and Union grievance meetings, arbitration hearings and midterm negotiations normally are to be held at the duty station of the local Union president, but the Employer has added a caveat in its proposal that apparently would give it the unilateral right to hold such meetings in other locations "when it is cost effective to do so."

use of video conferencing and telephone communications also would conserve the amount of travel time used by the parties' representatives in connection with labor relations activities. Accordingly, we shall order the adoption of the Employer's final offer.

3. Union Representatives/Official Time

a. The Union's Position

The Union proposes to designate eight individuals as officers and stewards, no more than five of who would be on official time at any one time.[3/] The Employer would be notified within 10 calendar days of any changes in its designated representatives. No maximum annual amount of official time for representational purposes would be included in the parties' CBA; official time would be granted pursuant to the terms and conditions of the CBA and 5 U.S.C. Chapter 71. Union representatives would request approval of official time prior to use and report back to their supervisors afterwards. Any alleged abuses of official time would be resolved through the negotiated grievance procedure. In addition, the Union would be authorized a bank of 300 hours of official time annually to be used by officers and stewards for labor-management training, and requests to use such time would be submitted as far in advance as possible.

While the Union would agree to the Employer's new counterproposal limiting it to no more than five representatives at any one time on official time, there should not be a cap on the number of hours of official time available to Union representatives. Rather, the parties should look to 5 U.S.C. Chapter 71 when determining the amount of official time to be granted to Union officers and stewards for representational activities. Compared with the Employer's proposal, the Union's would eliminate the need for continual renegotiation of official time provisions. In regard to training for Union representatives, a bank of 300 hours would be sufficient for the Union's needs given that this is a new bargaining unit and new

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3/ In its written submission, the Union stated that it "could agree" to that portion of the Employer's final offer which would limit to five the number of representatives on official time "at any given moment." The Union insists, however, upon the right to determine the number of overall representatives it may have; its final offer indicates that the Union now is willing to limit that number to eight.

CBA; Union representatives need more training during the initial term of a CBA as they are new to their roles. Since the Union is likely to have several weeks of advance notice of training, the Employer should have ample time to consider releasing employees for this purpose.

b. The Employer's Position

Under the Employer's final offer, at any given time it would recognize no more than five bargaining-unit employees as officers and stewards on official time. Notification to the Employer of changes in Union representatives would be required within 5 days. The Union would be limited to no more than 418 hours of official time annually, with no carryover permitted of unused hours into the next contract. Should it require official time in excess of 418 hours annually, the parties would negotiate the matter when a balance of 50 hours is reached for the year. Official time would be granted only for the following representational activities: Step one and two grievance representation; preparation for arbitration; arbitration hearings; formal meetings; Weingarten meetings; Employer/Union grievances; unfair labor practices; preparation and communication with the Employer on matters covered by the CBA; and representation in connection with proposed disciplinary, adverse action, or performance-based action. Only one Union representative on official time would serve as the representative on a particular case or complaint. The Employer would not be obligated to pay Union representatives for time spent when they are not scheduled to work, and no overtime or premium pay would be available for performing representational activities. Abuse of official time could lead to disciplinary action. Finally, the Union would be authorized a bank of 100 hours of official time each contract year for its representatives to attend labor relations training, with requests to be submitted to the Employer at least 2 weeks in advance.

According to the Employer, limiting the number of Union representatives on official time to five at any given time is adequate given the small size of the bargaining unit. Requiring the Union to provide, within 5 calendar days, notice of changes of Union representatives would help facilitate communications between the Employer and the appropriate Union representatives. There should be an annual cap on the amount of official time authorized for Union representational matters; setting the cap at 418 hours is reasonable given that there has not been much

representational activity within the bargaining unit, and additional amounts may be negotiated.

CONCLUSIONS

Upon careful review of the evidence and arguments presented by the parties, we conclude that this article should be resolved on the basis of the Employer's final offer. Our primary concern with the Union's proposal is that, except where it is entitled to receive official time, its reliance on the Statute in assessing how official time should be authorized presumably would involve the parties in case-by-case determinations concerning the reasonableness of requests. This has the potential of continually placing the parties at odds over allocations of official time, and could lead to grievances over official time issues. While it is unclear how the Employer came to propose 418 hours of official time annually for Union representatives, we prefer its approach because it puts responsibility on the Union to manage a pre-determined bank of hours, and permits the parties to negotiate an increased allotment if the amount proves to be inadequate. As to the Union's proposal for a bank of 300 hours of official time for training, that amount appears to be excessive given the relatively small size of the bargaining unit. Furthermore, the Union's proposal that notice regarding training requests be given "as far in advance as possible" may, in certain circumstances, not permit the Employer adequately to plan for the absences of its employees. For these reasons, we shall order the parties to adopt the Employer's final offer on the article.

4. Grievance Procedure

a. The Union's Position

In essence, the Union proposes that bargaining-unit employees, the Union and the Employer be permitted to file grievances over the interpretation or breach of the CBA or interpretation and application of any law, rule, or regulation affecting conditions of employment. Exclusions from the grievance procedure would include "(i)ssues outside the bargaining unit," which could be grieved under the Agency grievance procedure, and the discharge of probationary employees or employees serving a "trial period." A grievance would be terminated when the grievant leaves the bargaining unit before a decision on the grievance is reached "unless this Agreement is violated or the employee can be granted tangible relief."

Furthermore, Step 1 grievances would be presented to the supervisor or manager who "gave rise to the grievance." Step 1 grievance meetings would be convened within 10 workdays of the Employer's receipt of the grievance, with the Employer to render a written decision within 10 workdays after the Step 1 grievance meeting. A mandatory meeting between the parties would take place within 10 days after either the Union or Employer initiates a grievance.

There is no reason to prohibit bargaining-unit employees from initiating grievances over the interpretation or breach of the CBA or the interpretation and application of any law, rule, or regulation affecting conditions of employment. As to its proposed exclusions from the grievance procedure, issues that do not concern the bargaining unit should be addressed only in the Agency's grievance procedure. The proposed time frames for responding to grievances would provide the Employer with a reasonable amount of time to investigate the grievance, evaluate the matter, and issue a written decision. A grievance should be presented to the supervisor or manager who gave rise to the grievance, even though that individual may not be the employee's immediate supervisor, because the grievance is likely to have a better chance of being resolved if it is directed to the person whose action gave rise to the filing of the grievance. Grievances initiated by either the Union or the Employer should be the subject of a mandatory meeting between the parties within 10 workdays of receipt because such a meeting would be conducive to resolving the grievance expeditiously and at the lowest possible level.

b. The Employer's Position

According to the Employer's final offer, only the Union and Employer would be permitted to initiate grievances over violations of the CBA, law, rule or regulation. Official time would be authorized only for periods when Union representatives who attend grievance meetings are in duty status. A grievance over a claimed violation of the CBA by an employee should be terminated if the employee leaves the bargaining unit and no tangible relief would be available to that employee. Employee grievances would be presented to the employee's first-level supervisor. Deciding officials on employee-filed grievances are to have 14 workdays at both the Step 1 and Step 2 level to respond to the grievance. Employee grievances that are advanced to the Step 2 level would be filed with the Step 2 official within 5 workdays after the decision is rendered at Step 1.

Face-to-face meetings on grievances would not be mandated at any level.

Only the Union or Employer should be permitted to initiate grievances over claimed violations of the CBA, law, rule or regulation because such grievances typically affect the entire bargaining unit. Moreover, extending the right to bargaining-unit employees could lead to a flood of such grievances. Contrary to the Union's position, there is no need to exclude from the scope of the negotiated grievance procedure matters that clearly are not grievable because of the requirements of law, rule or regulation. Clarifying wording should be included which provides that Union representatives who seek official time to attend grievance meetings must be in an on-duty status when the meeting is held. Grievances should be terminated when filed by employees who leave the bargaining unit during the course of the grievance process and there is no tangible relief available to that individual; such employees no longer would have an interest in the outcome of the grievance and, therefore, it is pointless to continue its processing. Employee grievances should be presented to the first level supervisor because that individual's identity is known and it would give the parties the opportunity to resolve the grievance at the lowest possible level. The deciding official on Step 1 and Step 2 grievances should be given 14 workdays to respond to the grievance as that is a reasonable amount of time to investigate the matter and prepare a written response. Granting the Union only 5 workdays in which to advance a grievance to the Step 2 level is reasonable because this is little more than a ministerial action once the Step 1 deciding official denies the grievance. Face-to-face meetings on grievances should not be mandatory because they have the potential of involving costly travel expenses; communications could be handled just as effectively in many instances through video conferencing or teleconferencing.

CONCLUSIONS

Having considered the positions of the parties on this article, we shall order the adoption of the Employer's final offer to resolve their impasse. Overall, we are persuaded that the Employer's approach to grievance processing is more sensible than the Union's. For example, permitting a bargaining-unit employee to file a grievance over the interpretation and application of the CBA, as well as law, rule and regulation affecting conditions of employment, could generate numerous disputes over issues unrelated to the employee's own employment. Furthermore, the Union's attempt to bypass the employee's

immediate supervisor if he or she did not "give rise to the grievance" is inconsistent with the principle that dispute resolution efforts should start at the lowest possible level. As to processing times, the Union's proposal that the Employer have 10 workdays to investigate and respond to grievances may not be sufficient. Short turn-around times often lead to requests for extensions that could delay the process significantly. Finally, we find that requiring the parties physically to meet during Step 1 to resolve Union or Employer-initiated grievances could be more costly and time consuming than other forms of communication, and no more effective for resolving such matters.

5. Details and Temporary Promotion

a. The Union's Position

Under the Union's proposal, this Article would apply to details and temporary promotions of bargaining-unit employees to either bargaining-unit positions or non-bargaining-unit positions. Seniority would be the deciding factor on selection for a detail where the Employer determines there is no single best candidate and all are deemed to be equally qualified. Employees would receive pay for temporary promotions if they perform higher graded duties for more than 1 pay period. Since bargaining-unit employees remain in the unit up to the time they are detailed or temporarily promoted to a non-bargaining unit position, the procedures in this Article should remain applicable to them. Seniority status should be the deciding factor when more than one employee is interested in a detail or temporary promotion and the Employer has determined that they are equally qualified for the position because some recognition should be given to employee longevity in Government service. Finally, it is only fair and equitable to compensate employees for the performance of higher graded duties by increasing their pay after they perform the duties of the higher graded position for more than 1 pay period. This would also promote the concept of equal pay for equal work.

b. The Employer's Position

The Employer proposes that the Article pertain to details and temporary promotions to bargaining-unit positions only. Seniority status would be one of several factors considered by management when selecting employees for details. When it is determined that a temporary promotion is to last for more than 30 calendar days, the temporary promotion is to become effective

"at the beginning of the next pay period after the receipt of a personnel action (SF-52) in the Human Resources Office." The Article should be limited only to details and temporary promotions to bargaining-unit positions to be consistent with the fact that a CBA covers only bargaining-unit employees and positions. Allowing the Employer to consider other selection factors, in addition to seniority status, would give management more flexibility in selecting employees for details because it would open the process to a broader range of employees. Finally, the Employer should be allowed to delay payment of any additional compensation associated with a temporary promotion until it decides that the assignment should be for a period of 30 days or more. The delay would give it the time to evaluate whether it really needs an employee to fill a higher graded position for an extended period of time, that is, for more than 30 days.

CONCLUSIONS

After considering the evidence and arguments presented by the parties on this article, we conclude that, on balance, the Employer's final offer provides the better basis for resolving their impasse. We are persuaded primarily by the Employer's position that management should be permitted to consider more than seniority when selecting employees for detail assignments or temporary promotions. Allowing the consideration of other selection factors would give it the flexibility to select more "junior" employees who may benefit from the experience of working a detail assignment or having a temporary promotion opportunity. Accordingly, we shall order the adoption of the Employer's final offer.

6. Employee Health and Fitness

a. The Union's Position

The Union proposes that employees be authorized up to 3 hours each workweek to voluntarily participate in wellness/fitness activities if their workload permits. Any denials of administrative leave for this purpose would be reduced to writing and given to the employee upon the employee's request. Participation in wellness/fitness activities would help promote a healthy workforce, a matter that is of mutual interest to management and employees. Furthermore, other agencies have provided a similar benefit to employees.

b. The Employer's Position

The Employer would encourage its employees to use the Agency's Employee Assistance Program (EAP), a free resource, to obtain guidance on health and fitness matters. Employees may submit suggestions for health and fitness programs to the Employer's Human Resources Committee for review and action. Its proposed article would serve as a reminder to employees that there already are available programs, many free of charge, which promote employee health and fitness. Furthermore, under this wording, the Employer would not incur any costs and employees would stay on the job doing the work for which they were hired.

CONCLUSIONS

Having considered the evidence and arguments offered by the parties on this issue, we shall order the adoption of the Employer's final offer. In our view, permitting up to 3 hours of administrative leave each workweek, per employee, to engage in fitness activities is a significant amount of time that otherwise would be spent pursuing the mission of the agency. Furthermore, the cost associated with the Union's proposal, the likelihood of grievances over whether an employee's workload permits an authorization of administrative leave, and the lack of evidence in the record that the practice occurs at other agencies, do not lead us to favor the Union's position on this article.

7. Employee Recognition

a. The Union's Position

The Union proposes that incentive awards for bargaining-unit employees be issued pursuant to the NOAA Incentive Awards Program, NOAA Administrative Order 202-451, as amended on April 13, 1999. It also would be provided with reasonable access to all documents that recommend and implement awards for bargaining-unit employees. Furthermore, the Union would have non-voting representation on any Employer council or committee, and in meetings where recommendations for performance awards for bargaining-unit employees are reviewed. Awards for employees who work less than full-time would be based on the value of their contribution to the Federal Government. The current Incentive Awards Plan should be the basis of the parties' agreement on employee recognition because it was devised by the Agency and has been in effect for over 5 years. Providing the Union with access to documents concerning award recommendations

and decisions for bargaining-unit employees would give it the means to monitor whether awards received by employees are distributed fairly and equitably. For the same reason, the Union should be permitted to attend meetings where award recommendations for bargaining-unit employees are considered; the Union's role, however, would be limited, as it is not asking to be a voting member of any committee or council concerning employee awards. Employees who work less than full-time also should receive awards and recognition pursuant to the NOAA Administrative Order to ensure their fair treatment.

b. The Employer's Position

Under the Employer's final offer, awards would be processed in accordance with current Agency rules, orders and regulations. The Union would be provided with an annual report of awards received by members of the bargaining unit. The Employer asserts that its proposal essentially maintains the *status quo* in regard to the processing of both incentive awards and performance awards for bargaining-unit employees. The Union has not demonstrated a need for altering the current awards procedure. By not identifying a specific agency administrative order in this Article, the proposal would give the Employer the flexibility to modify award procedures in the event that Agency policies and practices change during the term of the parties' CBA. Providing the Union with an annual report on award distribution for bargaining-unit employees would give the Union an adequate means to monitor the fairness and equitability of employee awards.

CONCLUSIONS

Having carefully evaluated the parties' proposals and positions on this matter, we believe that the dispute should be resolved on the basis of the Employer's final offer. Our main concern with the Union's proposal is that it would bind the Employer to the current agency incentive awards system for the duration of the CBA. In our view, the Employer should be permitted to initiate changes in the incentive awards process, so long as it fulfills its statutory bargaining obligations with the Union prior to implementation.

8. Research Cruise Staffing Article [4/]

a. The Union's Position

The Union proposes that when there is an insufficient number of volunteers, assignments to research cruises would be made from a pool of qualified bargaining-unit personnel, as determined by management, with the most senior employees in the pool to be selected as needed; the Employer would consider employee health issues and personal hardship of employees in the selection process. In making berthing assignments, the Employer "will use factors such as age and physical condition" of the employee. The Employer also would have to request or recommend, to the entity which has the decision-making authority, that employees not be required to: (1) "hot bunk" or sleep on couches; (2) berth in unhealthy or unsanitary accommodations (due to failures of HVAC, plumbing, etc.); (3) sleep on unhealthy or unsanitary mattresses, pillows and blankets; and (4) occupy berths and use heads that have not been cleaned professionally. Employees participating in research cruises would be offered physical examinations and tetanus vaccinations at no cost to them. The Employer would request or recommend, to the entity, which has the decision-making authority, that employees on research cruises have private e-mail accounts and reasonable access to "ship-to-shore telephony," at no expense to the employee. If they do not have their own, employees would be issued new waterproof jackets, overall pants and boots before a cruise. In addition, the Employer would request or recommend, to the entity that has the decision-making authority, permission to equip the vessel with Employer-provided rubber stress reduction floor mats, chairs and appropriate workstations on deck to reduce muscle fatigue. Finally, the Employer also would be required to take steps to ensure that safety and health laws, rules and regulations are followed on all non-NOAA vessels, pursuant to NAO 209-115, "NOAA Employees Aboard Non-NOAA Vessels."

Overall, its final offer seeks reasonable measures to address unhealthful and unsafe working conditions that may occur

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4/ While NOAA has its own fleet of research cruise vessels, frequently it contracts with private ship owners and operators who provide and command research vessels. When research cruises are undertaken on privately-owned vessels, it appears, to some extent, that the Employer does not have complete control over their operation or the working conditions that exist on those vessels.

on research cruise vessels. The proposals ask the Employer to use its discretion to recommend or require private contractors to take steps that ensure employee health and safety while on research cruise vessels. Furthermore, it is reasonable to use a seniority-based selection procedure for assignments to research cruises among employees deemed qualified by the Employer for the assignments, with the Employer to take into consideration extenuating health issues and personal hardships. Tetanus shots should be offered to employees because there is increased chance of puncture wounds and lacerations associated with handling fish and spiny invertebrates, as well as the use of sharp instruments, on research cruises. The Employer has the technical capability of providing private e-mail accounts to employees while on board ship at little or no cost; doing so would give employees a measure of privacy in their personal communications. Moreover, employees should be provided with ship-to-shore telephone access because, under Government Travel Regulations, they are entitled to one telephone call home per day while in a travel status. They also should be outfitted with new boots and foul weather gear so that they do not have to use gear worn by others that may not be properly sanitized. In this regard, the Employer at the Branch level has a past practice of providing new gear to its employees. Fatigue reduction mats should be provided because they are an inexpensive way to help stem adverse conditions on cruises. Requiring the Employer to comply with NAO 209-115 would underscore that it should take steps to the extent of its ability to compel private contractors to implement practices and procedures for maintaining seaworthy vessels.

b. The Employer's Position

The Employer proposes that when there are insufficient numbers of volunteers for a research cruise, employees are to be selected on a rotational basis. In making these assignments, the Employer would consider any expertise employees might have which indicate they should be assigned to the research cruise; additionally, management would take into consideration any employee health issues and whether the assignment would cause personal hardship. When making berthing assignments, the Employer would consider an employee's age and physical condition. To the extent possible, employees would not be required to "hot bunk," and would be given access to e-mail while on research cruises. All employees would receive foul-weather gear in good condition for their use during the cruise.

Rotating research cruise assignments among employees is fair and would allow junior employees the ability to interact with more experienced personnel. Furthermore, under its proposal, employees could be excused from cruise participation should they have a physical condition or personal hardship that would make the assignment difficult to undertake. Its proposal addresses matters aboard cruise ships to the extent that the Employer has control over them. Providing employees with access to e-mail while at sea would be a reasonable means of communication. Finally, the provision for foul weather gear would help contain the costs associated with providing such equipment.

CONCLUSIONS

After carefully considering the arguments and evidence, we shall order the parties to adopt the Union's final offer to resolve the impasse over this article. The Union's proposal takes into consideration that the Employer may have limitations on its ability to compel certain working conditions for employees while they are working aboard privately-owned research cruise vessels; however, the proposal would require the Employer to act, to the extent of its discretion, to ensure that employees are provided with a safe and healthful environment while at sea. The Employer's proposal, on the other hand, does not appear to promote standards to ensure, to the maximum extent possible, that employees live and work in a safe and healthful environment while performing the Agency's mission on research cruises. With respect to assignments, the Union's proposal, while it favors seniority, also allows the Employer complete discretion to determine the qualifications an employee must possess to participate in the research cruise. In our view, this would give the Employer some flexibility in determining which employees should be assigned. Finally, while we understand the Employer's desire to contain costs, requiring employees to share foul weather gear may not be healthful, even if the gear is in good condition. Therefore, we are persuaded that employees should be provided their own personal foul weather gear to the extent they do not already have their own, or are not assigned such gear exclusively.

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 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the following:

1. **Union Facilities**

The parties shall adopt the Employer's final offer.

2. **Employee and Representative Travel**

The parties shall adopt the Employer's final offer.

3. **Union Representatives/Official Time**

The parties shall adopt the Employer's final offer.

4. **Grievance Procedure**

The parties shall adopt the Employer's final offer.

5. **Details and Temporary Promotion**

The parties shall adopt the Employer's final offer.

6. **Employee Health and Fitness**

The parties shall adopt the Employer's final offer.

7. **Employee Recognition**

The parties shall adopt the Employer's final offer.

8. **Research Cruise Staffing**

The parties shall adopt the Union's final offer.

By direction of the Panel.

H. Joseph Schimansky

H. Joseph Schimansky
Executive Director

November 8, 2005
Washington, D.C.