United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER FAYETTEVILLE, ARKANSAS and LOCAL 2201, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO	Case No. 89 FSIP 188

DECISION AND ORDER

Local 2201, 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 section 7119 of the Federal Service Labor-Management Relations Statute (Statute) between it and the Department of Veterans Affairs, Veterans Affairs Medical Center, Fayetteville, Arkansas (Employer).

The Panel determined that the impasse should be resolved pursuant to written submissions from the parties with the Panel to take whatever action it deemed appropriate to resolve the impasse. Submissions were made pursuant to these procedures and the Panel has considered the entire record.

BACKGROUND

The Employer provides quality health care to 4,500 inpatients and 52,000 outpatients who are eligible veterans. The Union represents 280 General Schedule and Wage Grade employees who are part of a nationwide consolidated bargaining unit. They work in engineering, dietetic services, the pharmacy, and nursing. The master agreement between the Department of Veterans Affairs and the American Federation of Government Employees, AFL-CIO, has been extended until October 1990. The parties also have negotiated a supplemental local agreement.

At the national level, a supplemental agreement (effective on April 1, 1987) replaced Article 32, "Performance Appraisal

System." Section 5, "Awards and Other Actions,[1/]" discussed supervisory recommendations for incentive awards at the performance rating levels of "highly successful" and "outstanding." The parties then engaged in protracted local midterm bargaining over the amounts of incentive awards. In accordance with Departmental guidelines, the practice has been to use a percentage of base salary to determine award amounts. In 1988, there were insufficient funds for an awards budget, and no awards were given. While the case was pending before the Panel, the parties agreed to maintain the status quo for FY 1989.

ISSUE AT IMPASSE

The sole issue in dispute concerns the method for distributing the amounts budgeted for incentive awards.

1. The Union's Position

The Union proposes the following wording:

> Funds available for incentive awards for bargaining-unit employees to be divided as follows:
>
> (1) Multiply the total funds available for awards for bargaining-unit employees by 80 percent.
>
> (2) Divide the resulting number by the total number of employees selected to receive awards. This is the amount of award for the employees receiving a highly satisfactory award, and the base award for employees receiving an outstanding award.
>
> (3) Divide the remaining 20 percent of funds available by the number of employees receiving outstanding awards and add this amount to the base award for each employee receiving an outstanding award.

1/ Section 5 - Awards and Other Actions

> A. Whenever an employee is rated highly successful on his/her annual performance evaluation rating, the appropriate supervisory official will review the rating to determine if the employee should be recommended for a monetary award.
>
> B. Whenever an employee is rated outstanding, the employee will automatically be considered for a monetary award and receive a certificate.

The key feature of the Union's proposal is that all bargaining-unit award recipients rated highly successful would receive an equal share of four-fifths of funds available; those selected at the outstanding level would receive that basic share plus an equal share of the remaining one-fifth. The Union asserts that its proposal recognizes superior on-the-job achievement, effort, and commitment to the mission of the hospital, while eliminating the source of dissatisfactions voiced by employees[2/] who work side-by-side, attain the same performance rating, but may receive vastly different award amounts under a percentage of base-salary formula. In lower graded jobs, the Union states, it may be more difficult to achieve at a superior level, and gain a supervisor's notice. It asserts that current rules and policies on awards are inconsistent and inequitable because they contain overlapping performance- and conduct-based criteria. Finally, it avers that its proposal would enhance confidence in the awards program by rewarding effort and effectiveness equally.

2. The Employer's Position

The Employer offers the following proposal:

> Service Chief/Supervisor may recommend annual cash performance awards based on outstanding and highly successful ratings to receive up to 3 percent and 1 percent, respectively, of annual base salary. In the event that, based upon actual quantity of award recommendations, this distribution would significantly exceed budgeted amounts, it may be necessary to proportionately decrease each award to conform with available funds. External (i.e. VACO/Regional Director) adjustments to salary funds during the fiscal year may also result in reduced funding for annual cash awards.

As a threshold question, the Employer claims that local bargaining on the method for calculating award amounts is precluded by the express terms of the master agreement. Although it concludes there is no obligation to bargain in this instance, it states that when a bargaining obligation has been met at the national level, as in this case, local bargaining should "be restricted to implementation."

2/ Article 13, Section 2B.6, of the master agreement specifies that decisions on incentive awards may not be grieved.

On the merits, the Employer's proposal would (1) maintain the status quo, and, (2) by applying a constant percentage at each rating level to annual base salary, yield a wide range of award amounts. It asserts that its proposal permits adequate recognition of employees' knowledge, skill, experience, and achievement. The Union's proposal, on the other hand, would undermine its ability to motivate effectively all employees to give the highest level of health care possible. Further, percentages selected by the Union appear arbitrary, reflecting the size of the award pool rather than work-related factors. For example, a pharmacist who might receive $1,096 under its proposal, would receive only $610 (a difference of $486) by application of the Union's formula, an amount less likely to motivate employees at higher pay levels.

CONCLUSION

As to the Employer's jurisdictional allegations, we are persuaded that the Union's incentive awards proposal is an appropriate subject for bargaining since it is not covered by the express language of the master agreement's section on performance awards, and similar proposals have been held negotiable by the Federal Labor Relations Authority.[3/] Moreover, it acknowleges that implementation bargaining concerning awards is appropriate at the local level.

Turning to the merits of the dispute, we have considered the evidence and arguments in this case, and conclude that it should be resolved by adoption of the Employer's proposal. Both parties recognize that the amount of an incentive award is a significant tool for motivating employee performance, and perceptions of unfairness may impair effectiveness. In this regard, the Union proposed that award amounts be equalized as a response to negative perceptions by employees about the fairness of previous awards. While its proposal may adjust some perceived inequities, we are not persuaded that the percentages applied would give appropriate recognition to (1) the differences between the two performance levels, and (2) the necessity for error-free performance by those with critical skills in a hospital setting.

3/ In National Treasury Employees Union and Internal Revenue Service, 27 FLRA 132 (1987), a case considered on remand from the D.C. Circuit, the Authority adopted the court's holding, and stated that a proposal on the rate of incentive award money to be paid is not pay, does not interfere with management's right to assign work or direct employees, or to determine its budget, and is, therefore, negotiable.

The Employer's proposal, on the other hand, focuses on providing incentives to employees in higher grades commensurate with greater responsibility, years of service, and specialized training and skills. In our view, this is particularly appropriate as these employees perform functions critical to services provided by a hospital.

Dissatisfactions arising when one employee receives an award, yet another rated identically does not, are beyond the reach of this decision because the master agreement specifies that the supervisor selects award recipients. Furthermore, adjustments cannot be made through the negotiated grievance procedure since such matters are specifically nongrievable.4/ Regrettably, today's order may not resolve the problems which prompted the Union to initiate negotiations. It is suggested, therefore, that the parties explore alternative efforts to respond to such significant concerns.

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:

The parties shall adopt the Employer's proposal.

By direction of the Panel.

Linda A. Lafferty
Executive Director

March 30, 1990
Washington, D.C.

4/ Under Article 10, Section 1A, of the master agreement, however, the Department agrees to treat all employees fairly and equitably, and without discrimination in all aspects of personnel management. This provision may offer a means for redress through the negotiated grievance procedure should claims of discriminatory denials of incentive awards arise.