

In the Matter of

DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER  
OF THE CURRENCY  
NORTHEAST DISTRICT OFFICE  
NEW YORK, NEW YORK

and

NATIONAL TREASURY EMPLOYEES UNION

Case No. 13 FSIP 43

ARBITRATOR'S OPINION AND DECISION

The Department of the Treasury, Office of the Comptroller of the Currency, Northeast District Office, New York, New York (Employer) 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, 5 U.S.C. § 7119, between it and the National Treasury Employees Union (Union).

After an investigation of the request for assistance, which arises from bargaining over the impact and implementation of the remodeling of the Employer's Northeast District Office in New York City, the Panel directed the parties to mediation-arbitration with the undersigned, Panel Chairman Mary E. Jacksteit. Accordingly, on April 15, 2013, a mediation-arbitration proceeding was convened by videoconference with representatives of the parties. During the mediation phase the parties addressed their interests and positions but they were unable to come to a voluntary resolution of the issues at impasse. Consequently, the issues were submitted for arbitration. In reaching my decision, I have considered the entire record, including the parties' final offers and documents submitted prior to mediation.

BACKGROUND

The Employer's mission is to ensure the safety and soundness of the national banking system. At the national

level, the Union represents a bargaining unit consisting of approximately 3,000 professional and non-professional employees, most of whom hold the position of bank examiner. Other predominate bargaining-unit positions are attorney, accountant and licensing specialist. Employees are stationed in the Headquarters office in Washington, D.C., four District Offices which include field offices, and resident offices in large banks. The current collective bargaining agreement (CBA) is in effect until September 29, 2013.

The Northeast District Office, located at 360 Madison Avenue, in New York City, currently is undergoing renovations that are needed as a result of the 2011 decision to consolidate the Office of Thrift Supervision (OTS) with the Office of the Comptroller of the Currency (OCC). The parties at the national level have decided to bargain locally over office space changes that may be needed as a result of the consolidation. Renovations in the Northeast District Office are being made in phases with the last one expected to be completed in June 2013. Approximately 75 bargaining-unit employees are affected. Thirty employees are transferees from OTS.

#### ISSUES AT IMPASSE

The parties disagree over: (1) the method for determining priority when employees select offices from among vacant workspace within their work unit; and (2) whether permanent part-time employees should be included in a priority list with full-time employees, or make their office selections after all full-time employees have made theirs.<sup>1/</sup>

#### POSITIONS OF THE PARTIES

##### 1. The Employer's Position

The Employer proposes that priority for office space selection should be determined by an employee's Federal service computation date (SCD) for leave purposes, with employees to select from available space within their organizational unit. Two recent agreements in other OCC offices use SCD to determine

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<sup>1/</sup> The parties agree that office selections should be made first according to employee pay bands, in descending order. They also agree that if two or more employees in the same pay band are tied, based upon seniority status, that the tie breaker for office selection would be either a coin toss or numbers drawn from a hat.

selection priority among employees and, in the Northeast District Office, the parties have on one occasion reached an agreement that uses SCD as the basis for determining priority among employees for office selection.

The Employer is able to readily calculate an employee's SCD because the data is maintained by its Human Resources office and, if employees believe the calculations are inaccurate, they would have SF-50 forms to document their service time. SCD is used for other benefit calculations (leave for instance). The Employer opposes using an employee's earliest entry on duty (EOD) date at OCC or a predecessor agency (e.g. OTS) because OCC does not have reliable data from predecessor agencies that indicate when employees began working there. In this regard, in order to compute EOD dates for employees who came on board from OTS, management would have to perform a manual search of their personnel records and this may not render entirely accurate results.<sup>2/</sup> Using the Union's formula also would create the potential of situations where because of a break in service an employee's last hire date would deprive the employee of credit for previous years worked at the agency. The SCD, on the other hand, is adjusted for breaks in service but it provides credit for all years of service.

As to whether part-time employees should select their offices after selections are made by full-time employees, the Employer contends that there should be no distinction based upon the number of hours an employee works. To do otherwise would discourage employees from requesting part-time employment and send a message to part-timers that they do not have the same status as full-time workers. The Employer also notes that with telework (where there is no standard limit on the number of days), alternative work schedules, and travel, there are many instances when the work space of full-time employees is not occupied. Consequently, the number of hours of work should not influence office selection.

## 2. The Union's Position

The Union proposes that seniority for office/cubicle vacancies shall be determined as follows:

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<sup>2/</sup> It might take getting information from OTC predecessor entities that is not in the OPF.

1. Selection by last hire date at OCC or OTS (including OTS employee who were transferred into OTS from predecessor agencies).
2. Full-time employees shall make their office/cubicle selection ahead of permanent part-time employees.

Essentially, the Union does not accept management's claim that it lacks data on, or that it is onerous to reconstruct, EOD dates for employees who had prior service with other financial regulatory agencies that have been subsumed by OCC over the years. The past practice in the Northeast District Office reflects the Union's view that it is fairer to use an EOD date because employees, who have worked for OCC over the years, or its predecessors, deserve recognition for their longevity and continuous service. Using an employee's Federal SCD, as management proposes, could create resentment among employees who may find themselves farther down the priority selection list and displaced by someone new to the agency, but having many years of Federal service elsewhere. The only challenge to the existence of this past practice was one instance involving a small number of employees where there was no formal bargaining and local stewards agreed to use SCDs. In the Union's view, this does not displace the past practice created by past formal bargaining.

As to the part-time versus full-time selection issue, the Union proposes that permanent part-time employees should select their offices after full-time staff. By permanent, the Union means to cover instances where a part-time position is created and filled as part-time, and to exclude instances where full-time employees are granted part-time schedules for individual reasons. Employees in the latter instance would not lose their seating priority (or have to change offices). Again, its proposal reflects the past practice in the Northeast District Office and the Union sees no reason to modify it, particularly when there are so few permanent part-time employees.

#### CONCLUSIONS

Having considered the parties' proposals and positions, I have determined that the impasse should be resolved on the basis of the Union's proposal.

Because the Panel believes that mutually negotiated agreements are always to be preferred for determining working conditions, it requires the party at impasse who is seeking to

change the *status quo* to bear the initial burden of showing why, in the absence of a new agreement, the existing agreement between the parties should not be continued.

Here, the Union has established the existence of a past practice to use the last hire date to determine seniority for purposes of office selection, and to give preference to full-time employees over those in part-time positions. This past practice carries the weight of the *status quo*. The Employer did not dispute the existence of this past practice except to offer one instance where the acquiescence of shop stewards was obtained to use the SCD in a move involving a small number of employees and where the parties were not engaged in formal bargaining. This does not disturb my finding of a past practice.

It is true that the Northeast office chapter of NTEU appears to stand alone in wanting to use the last hire date (or at least it could not offer an example of other offices using it, while the Employer could show a number of other NTEU-OCC labor-management agreements using the SCD). It is not really evident why that is the case but what is clear is that these two issues stand out from an otherwise complete agreement, and that the Union's proposals rest on the employees' sense of equity that those working long and steadily for this agency should have priority when selecting work space over those who have spent part of their career in other parts of the Federal government or who have gone in and out of Federal service. This sense of equity may reflect the work culture or it may reflect some reality of the office's location in New York City. Whatever the basis, it has worked, as far as the record reflects.

The Employer's objections to continuing the practice are based on speculation about the burden posed by determining last hire dates for those Employees who transferred to OCC from OTS. How often there is going to be a problem is unknown. How tough it is going to be to resolve disputes is also unknown - it may simply involve locating an easily retrievable Form-50 from the OPF. No one knows yet.

Weighing the interests put forward by the Union and the speculative nature of the Employer's concern I think the balance tilts to the *status quo*. It is hoped that the process of applying the Union's approach will be tracked such that the parties can examine the experience to see if it makes sense to continue the approach if a need should arise in the future. Hence the parties will be ordered to adopt the Union's proposal that continues past practice.

With regard to proposals on part-time employees, again the Employer speculated about ill effects but there is no evidence that past application of this approach created complaints or morale issues. Nothing about the absorption of OTS employees has altered the situation. With the refinement of the Union's proposal to make clear that it does not apply to anyone other than employees hired to fill posted permanent part-time positions, it is clear that only a very small number of employees will be affected and that there will be no deterrent effect on requests for changes to part-time schedules. A conclusion is warranted that no reason to change the *status quo* has been established.

DECISION

The parties shall adopt the following wording to resolve the impasse:

1. Selection by last hire date at OCC or OTS (including OTS employee who were transferred into OTS from predecessor agencies).
2. Full-time employees shall make their office/cubicle selection ahead of permanent part-time employees.



Mary E. Jacksteit  
Arbitrator

May 7, 2013  
Takoma Park, Maryland