

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING
COMMAND MID-ATLANTIC
NORFOLK, VIRGINIA

and

TIDEWATER VIRGINIA FEDERAL EMPLOYEES
METAL TRADES COUNCIL, AFL-CIO

Case No. 13 FSIP 185

DECISION AND ORDER

The Tidewater Virginia Federal Employees Metal Trades Council, 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 the Navy, Naval Facilities Engineering Command Mid-Atlantic, Norfolk, Virginia (NAVFAC MIDLANT or Employer).

After investigation of the request for assistance, arising from bargaining over an on-call procedure^{1/} for handling

1/ 5 C.F.R. § 551.431(b) describes on-call as follows:

(b) An employee is considered off duty and time spent in an on-call status shall not be considered hours of work if:

(1) The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or

overnight maintenance coverage, the last issue to be resolved in the parties' negotiations over their successor collective bargaining agreement (CBA),^{2/} the Panel determined to resolve the dispute by directing them to submit their final offers on the issue at impasse and statements of position with supporting arguments and evidence. The parties were advised that after receiving their submissions, the Panel would take whatever action it deemed appropriate to resolve the impasse, which may include the issuance of a binding decision. Written submissions were made pursuant to the Panel's direction, and the Panel has now considered the entire record.

BACKGROUND

The Employer's mission is to support the fleet and to maintain the facilities at Navy bases and other Government facilities from Maine to North Carolina. The Union is a Council with 11 member locals under 1 CBA. The Council represents approximately 1,800 Wage Grade employees who work in positions such as plumber, electrician, sheet metal worker, carpenter, glazer, tile setter, insulator, boilermaker, boiler technician, and crane operator. The parties' CBA was to have expired on April 22, 2009, but has been extended annually until its successor is effectuated.^{3/}

(2) The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

2/ The parties returned to the bargaining table to resume negotiations over the issue after the Department of Defense (DoD) Civilian Personnel Advisory Service among other provisions, disapproved the agreement the parties reached on Article 14, Section 14, pursuant to 5 U.S.C. § 7114(c)(1).

3/ The same parties also requested the Panel's assistance to resolve an impasse over Article 14, Section 14, in Case No. 06 FSIP 5. The parties' reached a voluntary settlement during an informal conference with a former Panel Member on January 11, 2006, where they agreed to the following provision on Article 14, Section 14:

The parties agree that the Memorandum of Understanding regarding on call overtime signed in June 2001 will remain in effect during this contract. In recognition of their performance,

ISSUE

The parties essentially disagree over how much of their previously-negotiated agreement on Article 14, Section 14, should be removed from the successor CBA.

POSITIONS OF THE PARTIES1. The Union's Position

The Union proposes that Article 14, Section 14, be removed from the parties' CBA in its entirety. In this regard, its position should be adopted because it "follow[s] the recommendation of [DoD]" that the "entire section" should be stricken from the CBA to remedy the legal defect.

2. The Employer's Position

The Employer proposes that the following wording constitute Article 14, Section 14:

The EMPLOYER will identify the trades and minimum number of employees that will be required to be assigned on-call status. Employees assigned to on-call status are required to respond and report to the job

the employer agrees that eligible on-call employees may receive a quarterly monetary award of at least \$50. Initial awards will be given at the six-month point following approval of this contract by DoD. Eligibility for this award will be determined as follows:

- a. No unexcused instances of failure to report within the required 2-hour timeframe. An excused absence is something beyond the control of the employee or excused by the employer.
- b. At least one on-call report per award period.
- c. Employee volunteers for duty rather than being assigned. Assigned employees are not ineligible but those volunteering are eligible for higher awards.
- d. Dependent on availability of award funds.

site within two hours from the time they are called; will report when they have arrived at the job site; will report completion of job or current job status when requesting release from their on-call assignment; are required to remain within an on-call radius allowing two-hour response; and are allowed to make arrangements such that another qualified employee will respond in place of employee assigned.

The EMPLOYER will assign on-call status from Wednesday to Wednesday. Employees assigned to on-call status will be provided an electronic device. Any calls not responded to in a timely manner will be followed up with a phone call to the employees' personal contact numbers. The employee will not be placed on-call during periods of scheduled leave. In the event of an emergency that would prevent an on-call employee from responding, the employee will report the nature of the emergency and its expected duration to the NAVFAC MIDLANT Utilities Operation Center. Employees assigned to on-call may be relieved of the assignment in the event of an emergency. The EMPLOYER will maintain lists by site and trade of all employees subject to on-call assignment in inverse seniority. The on-call roster will be posted fourteen days in advance. Volunteers will be used to the maximum extent practicable to staff on-call requirements. In the event there are sufficient volunteers, the assignments will be rotated by inverse seniority. If the assigned on-call employee has reason to make arrangements for another employee to respond in his/her place, the other employee must be qualified to respond to the call. An employee is considered qualified to respond in the place of another if he/she is on the same as the employee assigned.

The EMPLOYER is encouraged to recognize employees for specific employee accomplishments cited as a result of responding to an on-call assignment.

With respect to the Union's claim that the DoD Civilian Personnel Advisory Service disapproved all of Article 14, Section 14, it "is clearly misreading the Agency Head Review of the article." In the Employer's view, the only portion of the article that the parties executed on December 18, 2012, that was specifically cited for disapproval on legal grounds was the following provision:

In recognition of their performance, the EMPLOYER agrees that employees will receive an award of \$350 for each week that he/she has on-call duty. Employees will be deemed ineligible for this award on a weekly basis for any unexcused absences or failure to report within the required two-hour timeframe. An excused absence is something beyond the control of the employee or excused by the EMPLOYER.

In disapproving this portion of Article 14, Section 14, the DoD Civilian Personnel Advisory Service stated:

This provision is contrary to 5 C.F.R. § 551.431, which prohibits payment to an employee who is placed in an on-call status even if the employee is required to carry a beeper and remain within a reasonable call-back mileage radius from the activity. Accordingly, the language cited above is contrary to government-wide regulations and, in accordance with 5 U.S.C. § 7117(a)(1), is non-negotiable. The parties may remedy this provision by deleting it in its entirety.^{4/}

The Union is not disputing that "compensation for being in an on-call status" is non-negotiable. Rather, it "merely wants the on-call language taken out because [the Union] agreed to it based on the incentive for employees to be inconvenienced while not in a duty status."

The Employer's proposal should be adopted because, essentially, it maintains the *status quo*, and would avoid reversion to the parties' pre-2001 "Trouble Desk" policy, which was "unreliable at best" and "lent itself to safety concerns, additional damage to government property and had an adverse effect on employee morale." The current On-Call policy, on the other hand, "is a far more efficient use of manpower" and "assures the fairest application of call back requirements as it

4/ The DoD Civilian Personnel Advisory Service based its disapproval on Federal Labor Relations Authority (FLRA) decisions, beginning with *AFGE, Council of Marine Corps Locals and Navy, Marine Corps, Washington, DC*, 39 FLRA 773 (1991), where the FLRA stated that "C.F.R. § 551.431 prohibits payment to an employee who is placed in an on-call status even if the employee is required to carry a beeper and remain within a reasonable call-back mileage radius from the activity."

is distributed by name via a scheduled rotation that employees can plan for in advance and anticipate."

CONCLUSION

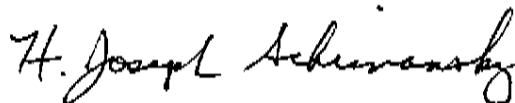
Having carefully considered the evidence and arguments presented in support of their positions, we shall order the adoption of the Employer's final offer to resolve the parties' impasse regarding this matter. Based on the record presented, it is clear that the Agency Head recommended only that the performance award portion of the parties' agreement on Section 14 be removed from Article 14. In addition, we are persuaded that the on-call procedures set forth in the remaining portions of Section 14 are more consistent with the statutory requirement of an effective and efficient Government than the pre-2001 "Trouble Desk" policy. Finally, we urge upper level NAVFAC MIDLANT management to comply with the last sentence of the Employer's final offer by actively encouraging its supervisors to recognize employees who are unduly inconvenienced as a result of the continuation of the current on-call procedures.

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 final offer.

By direction of the Panel.



H. Joseph Schimansky
Executive Director

February 18, 2014
Washington, D.C.