

In the Matter of

DEPARTMENT OF HOMELAND SECURITY
CUSTOMS AND BORDER PROTECTION
SWEETGRASS BORDER PATROL STATION
SUNBURST, MONTANA

And

LOCAL 2913, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 14 FSIP 112

ARBITRATOR'S OPINION AND DECISION

Local 2913, 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, 5 U.S.C. § 7119, between it and the Department of Homeland Security (DHS), Customs and Border Protection, Sweetgrass Border Patrol Station, Sunburst, Montana (Employer).

Following an investigation of the request for assistance, which concerns issues that arose during post-implementation bargaining over management's decision to reassign border patrol agents from the Shelby Montana Substation^{1/} to the Sweetgrass Station, the Panel determined to assert jurisdiction and directed the parties to resolve the issues through mediation-arbitration by telephone conference with the undersigned. The proceeding was held on November 17, 2014. During mediation, the parties thoroughly discussed the issues, but it became apparent that a voluntary resolution could not be achieved; accordingly, they have submitted their final offers for arbitration. Each side also presented documentary evidence and photographs in support of their proposals and positions and attestations from

^{1/} The 16 bargaining-unit employees who worked in Shelby were given the option to either transfer to Sweetgrass, about 1 hour away, or relocate to new assignments along the southwestern U.S. border. Eight employees decided to transfer to the Southwest and eight relocated to Sweetgrass. The relocation took place in March 2014.

employees and managers on the issues.

BACKGROUND

The Employer's mission is to protect U.S. borders from terrorism, human and drug smuggling, illegal immigration, and agricultural pests while simultaneously facilitating the flow of legitimate travel and trade. The Union represents employees in the Sweetgrass Station who are part of a nationwide bargaining unit consisting of about 15,000, most of whom are border patrol agents. At the national level, the parties are covered by a master collective-bargaining agreement negotiated in the 1990s that remains in effect until replaced by a successor agreement.

ISSUES AT IMPASSE

The parties disagree over whether: (1) border patrol agents should be permitted to park their personally owned vehicles (POVs) in the Sweetgrass Station garage; and (2) the location of work space for four collateral duty agents/officers.

POSITIONS OF THE PARTIES

1. Parking

a. Union's Position

The Union proposes that "(a)gents will be permitted to park a personally owned vehicle in the station garage in place of the vehicle they will be using for the duration of their shift." Currently, all parking spaces in the garage are occupied solely by Government owned vehicles (GOVs). Under the Union's plan, an agent would be allowed to park a POV in a space after the employee backs out the GOV to be used during the employee's shift. Border patrol agents want the ability to have covered parking for their POVs because the climate in Montana is severe, particularly in winter when there is extreme snow fall and employees who park outside would have to spend time clearing snow and ice from their vehicles before driving home. POVs parked in the outside lot have been damaged by hail and one employee sustained a serious injury when he fell on ice when retrieving his vehicle from the outside lot. Permitting indoor parking of POVs would eliminate such incidents. Furthermore, employees who worked in the Shelby Substation had been permitted, for at least 11 years prior to their transfers, to park their POVs in its small garage and there never was an

incident where backing a GOV out of a space and parking a POV in its place resulted in a collision. There is no reason why the practice should not be permitted in the larger Sweetgrass Station garage where it would be easier and safer to park. Moreover, the practice of allowing employees to park their POVs in station garages was not unique in Shelby as it also has been permitted in other Montana stations located in the Havre Sector, such as Malta and Scobey, as well as in stations in Vermont.

b. Employer's Position

The Employer proposes the following:

Parking for personally owned vehicles will be maintained at the designated outside parking stalls. All indoor parking is reserved for Government owned vehicles only. No personally owned vehicle is to be parked inside the Government garage.

The Employer asserts that employees should continue to park their POVs in the outside parking lot which is only a few steps from the office building and conveniently equipped with electric plug-in stations which employees may use for their POVs. The outside lot has ample space for POVs and is within the station's secured compound. Agents are outside in ice and snow all day long during the winter, so it is not a hardship for them to walk from the outside parking lot to the nearby office building each workday. There is not enough space in the garage for all GOVs. Supervisors park their GOVs in the outside lot as they have relinquished parking spaces in the garage so that the vehicles assigned to bargaining-unit employees may be parked there. DHS policy does not permit employees to park their personal vehicles in a station garage when that space is needed for GOVs. Even supervisors do not park their POVs in the garage because it is small and, therefore, used exclusively for GOVs. The garage was designed specifically to house GOVs and it would be a misuse of Government funds to allow the space to be used for a contrary purpose. The Union's proposal, which anticipates that an employee would back out a GOV and then pull the employee's POV into the vacated space, increases the risk of accidents and congestion in the garage and may create liability issues. General Services Administration (GSA) regulations give POVs the lowest priority when it comes to parking in Government-

controlled areas.^{2/} Only when parking spaces are not required for official needs may an agency allow employees to use parking spaces in a Government-controlled facility, but all spaces in the garage are deemed necessary for official use.

Furthermore, DHS mandates that all GOVs must be washed before they are parked in a station garage inasmuch as garage space must be kept clean at all times. At the Sweetgrass Station, dirt and snow are washed off the GOVs every day before they are returned for parking in the garage at the end of the employee's shift. The vehicle washing bay may not be used for POVs so, when the weather is inclement, snow, ice and mud are likely to accumulate on POVs, all of which would eventually pool on the garage floor, thereby creating problems in the garage. If the Employer were to allow POVs to be parked in the garage it would become dirty and extra time and money would have to be spent on garage maintenance. Finally, since the garage is leased space, the Employer would have to take steps to renegotiate the lease to allow POVs to park in the garage. The Employer denies the Union's claim that, in the past, employees have been permitted to park their POVs in station garages. If there were such incidents, they were short-lived because policy dictates that it not be permitted. By way of example, in the Agency's Grand Forks Sector, the employer and the Union reached an agreement on parking that does not permit POVs to be parked in the Government-controlled garage.

2. Office Space for Collateral Duty Agents^{3/}

a. Union's Position

The Union proposes that "(a)gents assigned to collateral duties will be permitted unrestricted use to (sic) the office space adjacent to the K-9 kennels." The Union is seeking space where agents may work continually to avoid a situation where they may be moved to different areas of the office depending

^{2/} See 41 C.F.R. § 102-74.285 for the rank order in which agencies assign priority to parking spaces in controlled areas.

^{3/} For 3-month periods there are four such agents/officers who are assigned duties other than those typically performed by border patrol officers. The collateral duty positions are: vehicle maintenance officer, sensor agent, collateral intelligence agent and intermediate force (firearms) instructor.

upon where space for them becomes available. The collateral intelligence agent already is working in the K-9 office where the other collateral duty agents also should have their workstations. The K-9 office would be the most convenient work area for the vehicle maintenance officer because of its proximity to the garage and the office is large and underutilized so agents could work there undisturbed. Currently, there is only one K-9 officer who uses the work area infrequently and another is expected to arrive in a few months after completing training. Even with two K-9 officers in the space it could easily accommodate several more workstations.

The Union denies the Employer's claim that having collateral duty agents routinely work in the K-9 office would disturb the dogs. Rather, the adjacent kennel remains largely unused because the dogs typically reside with their handlers and are out in the field during the day, so occupants of the K-9 office would not disturb the dogs. The Union opposes having collateral duty agents use the control room as their work area because that room shares the HVAC system with the detention room where individuals with potentially communicable diseases are processed. As an extra safety precaution, collateral duty agents should not be compelled to utilize that space, particularly when there are better options available. Moving collateral duty agents from one office to another, on a space available basis as the Employer proposes, would be disruptive to the officers who need the consistency of having the same work space to perform their duties.

b. Employer's Position

The Employer proposes the following:

Collateral duty agents will continue to perform their assigned collateral duties in the report writing room. As specific needs arise for additional space, time and privacy collateral duty agents will utilize the workstations in the control room on a temporary basis and only as long as the specific need exists. No permanent desk space will be assigned for collateral duty agents.

The Employer proposes that agents primarily use the report writing room to perform their collateral duty assignments. The room is an open space design with approximately eight workstations. Currently, three of the four collateral duty agents have their work space in the report writing room.

Workstations there are frequently available because the space is used only intermittently by other officers for the purpose of checking email before and after their shifts and preparing time and attendance reports. The Employer estimates that the workstations are available "80-percent of a shift." The control room, which also is equipped with computers, would serve as an alternative work area if an agent needs more privacy to perform work. That room also is used infrequently due to the small number of apprehensions in the Sweetgrass area each year. Since agents perform collateral duties on a part-time basis, they only need to occupy a work space for a limited amount of time. There is no need to create a dedicated work area for them, which would involve the expense of constructing and furnishing new workstations, when there already is functional space available. Many areas in the Sweetgrass Station are used for dual purposes so it would not be unusual for collateral duty agents to use the report writing room or the control room, as necessary, to perform their work.

The Employer opposes assigning collateral duty agents to work space in the K-9 office. Currently, one K-9 officer is assigned there and another will arrive within the year; a glass wall separates the kennels from the employee work areas. DHS has specific guidelines for areas housing dogs, one of which is that the area must not have a lot of noise because sound agitates the dogs which are "high strung" animals. Placing more people in the K-9 office than necessary is likely to cause problems with the dogs and would violate K-9 policy. Moreover, the Employer would have to incur the expense of constructing additional workstations in the K-9 office for collateral duty agents, an expensive and unnecessary project inasmuch as there already is sufficient vacant space available where the agents may perform their collateral duties.

OPINION

Having considered the totality of the parties' evidence and arguments in support of their positions, I find that the Union's proposal concerning parking provides a more reasonable resolution. My decision is influenced by the fact that border patrol agents assigned to the Sweetgrass Station work in an area where the climate is inhospitable for the better part of the year and I believe that some accommodation is warranted for working in such an environment. Permitting employees the option of parking their POVs indoors, in spaces that otherwise would remain unutilized and vacant for the duration of the employee's shift, would be a welcome alternative to parking outside and

being faced with the prospect of having to scrape snow and ice off their vehicles before driving home. I cannot find merit to the practice of allowing parking spaces in the indoor garage to remain empty while employees park their POVs in the outdoor parking lot. Union witnesses creditably testified that indoor parking had been a past practice at the Shelby Substation, and there had not been any incidents involving damage to vehicles when an employee backed out a GOV from a parking space and moved a POV into the space. Border patrol agents, because of the nature of their jobs, are experienced drivers and I trust that they will exercise caution in the garage. While it is true that the garage floor may not be as tidy as it once was when only freshly-washed GOVs were allowed to park in the garage, in my view, the benefit to employees outweighs the need for a pristine garage floor.

Finally, pursuant to GSA regulations, agencies may permit employees to park their POVs in controlled areas when spaces are not needed for official business. See 41 C.F.R. § 102-74.285(g). There is no indication in the record that the Employer intends to use parking spaces vacated temporarily by the removal of a GOV for any other official purpose while the employee utilizes the vehicle for the duration of the employee's shift. Accordingly, inasmuch as it does not appear likely that the vacated space would be used for official business, employees may use indoor spaces to park their POVs.

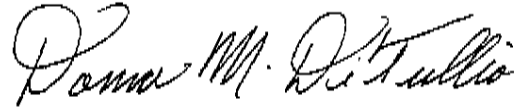
Turning to the workspace issue, after carefully considering the arguments and evidence presented, I conclude that the impasse over office space for collateral duty agents should be resolved on the basis of the Employer's proposal. I am persuaded by the Employer's argument that inasmuch as fully-equipped work areas already exist within the Station that could be utilized by the agents, there is no need to construct workstations elsewhere. The Union's proposal to assign collateral duty agents to the K-9 office would require a reconfiguration of that space and outfitting it with computers and furnishings for at least three cubicles which, in my view, would entail an unnecessary expenditure of agency resources.

DECISION

Pursuant to the authority vested in me by 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 the Panel's

regulations at 5 C.F.R. § 2471.6(a)(2), I hereby order the following:

1. Parking. The parties shall adopt the Union's proposal.
2. Office Space for Collateral Duty Agents. The parties shall adopt the Employer's proposal.



Donna M. DiTullio
Arbitrator

December 12, 2014
Washington, D.C.