

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

US ARMY CORPS OF ENGINEERS
LOGISTICS ACTIVITY CENTER
MILLINGTON, TN

And

INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL
ENGINEERS, LOCAL 259

Case No. 21 FSIP 019

DECISION AND ORDER

BACKGROUND

The US Army Corps of Engineers, Logistics Activity Center, Millington, Tennessee (Agency) filed this case under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, over the parties' negotiation of a Collective Bargaining Agreement (CBA). The Agency, located at the Millington Naval Support Activity in Tennessee, supports the U.S. Army Corps of Engineers (USACE) worldwide customer locations. The Agency's mission is to provide operational logistics services to USACE organizations by providing consolidated supply, transportation, maintenance, and facility services through delivery points tailored to the needs of each command. The International Federation of Professional and Technical Engineers, Local 259 (Union), represents a bargaining unit of approximately 66 of the Agency's nonprofessional employees.

BARGAINING HISTORY

Following the FLRA's certification of the Union as the unit's exclusive representative in June 2015, the parties began negotiations of a CBA. The parties negotiated over the CBA and then mediated with the assistance of a Federal Mediation and Conciliation Services (FMCS) Mediator. On November 13, 2020, the

FMCS Mediator released the parties to seek the assistance of the Panel. Then on December 21, 2020, the Agency filed this request for assistance.

On November 9, 2021, the Panel asserted jurisdiction over the six provisions of the parties' CBA that remained in dispute. The Panel ordered the parties to engage in concentrated mediation, with the assistance of FMCS, for a period of no longer than forty-five days from the commencement of negotiations. The parties engaged in negotiations with the assistance of two FMCS Mediators and agreed on all but two of the remaining provisions of the CBA, Section 8.2(b)(9) and Section 17.1. On December 2, 2021, the FMCS Mediators released the parties back to the Panel. Then on December 17, 2021, the Panel ordered the parties to a Written Submissions procedure over the two remaining provisions. The Panel directed the parties to submit their statement of position (SOP) and any evidence by 5:00 p.m. (EST) January 5, 2022, and to submit rebuttals by 5:00 p.m. (EST) January 12, 2022.

On January 5, 2022, the Agency provided its SOP nine minutes after the 5:00 p.m. (EST) deadline. The Union did not submit its SOP to the Panel and the Agency until January 11, 2022, and only after inquiry from Panel staff as to the status of its SOP. With its submission, the Union, citing email issues during the holidays, requested the Panel grant an extension of the deadline of January 5, 2022, and accept its late SOP. The Agency objected to the Union's late submission because the Union did not explain what email issues caused it to be almost one week late in its submission and because the Union had an advantage because it had the Agency's SOP for almost a week before submitting its SOP.

To develop a complete record for the Panel to consider, the deadline for rebuttals was extended from 5:00 p.m. (EST) January 12, 2022, until the same time on January 18, 2022. The Agency timely provided its rebuttal, and the Union submitted its rebuttal twelve minutes after the 5:00 p.m. deadline. Although the Panel's Written Submission order explicitly limited the parties' rebuttals to three pages, double-spaced, both parties' rebuttals exceeded this limit.

PROCEDURAL CONSIDERATIONS

The Panel must first address the procedural errors committed by both parties in the Written Submission procedure. First, the Panel will consider the Agency's SOP and the Union's rebuttal even though they were untimely, because both parties were just a few minutes late in their respective submissions. Next, the Panel considers the severity of the Union's tardiness in submitting its SOP and the Union's vague explanation of the delay involving issues with email. The Panel also recognizes that the Union had an unfair advantage in accessing the Agency's SOP while drafting its own SOP. In the absence of exigent circumstances, the Union's egregious tardiness was a complete disregard for the Panel's Order, and therefore, the Panel strikes the Union's SOP from the record. Furthermore, both parties blatantly disregarded the

Panel's Order limiting rebuttals to three pages. The Panel, therefore, strikes both parties' rebuttals from the record.

ISSUES AT IMPASSE

The following two issues remain for the Panel to address:

1. Article 8: Grievance Procedure - Section 8.2(b)(9): Exclusions from the parties' Negotiated Grievance Procedure; and
 2. Article 17: Merit System Principles
- Article 8: Grievance Procedure - Section 8.2(b)(9): Exclusions from the parties' Negotiated Grievance Procedure

Agency Proposal:

Section 8.2 - Scope. This negotiated grievance procedure shall apply to all grievances.

b. This grievance procedure does not apply to complaints or grievances concerning the following:

(9) the award or denial of any form of incentive pay, including but not limited to cash awards or quality step increases.

Union Proposal: STRIKE #9 LANGUAGE

As the Agency seeks to limit the scope of the grievance procedure, Federal court precedent holds that the Agency "must establish convincingly that, in the particular setting, its position is the more reasonable one." *AFGE v. FLRA*, 712 F.2d 640, 649 (D.C. Cir. 1983). In this case, the Agency did not justify the need to limit the scope of the negotiated grievance procedure with its proposed exclusion. The Agency's SOP claims that incentive payments are excluded from the Army's Administrative Grievance System (AGS) and should be excluded from the negotiated grievance procedure as well. Additionally, the Agency argues that because these amounts are fixed by Agency policy, they are inappropriate for inclusion in any grievance.

The Agency has not convincingly established that its position is the more reasonable one. It does not follow logically that because a matter is excluded from a unilaterally-established AGS, it should be excluded from a bi-laterally negotiated grievance procedure. Furthermore, the Agency has failed to explain how using predetermined rates for incentive cash awards and quality step increases would affect bargaining unit employees' right to grieve such matters as an alleged mistake

in applying the predetermined rates. Accordingly, the Panel orders the Agency to withdraw its proposal.

- **Article 17: Merit System Principles**

Agency Proposal:

Section 17.1 – General. The Employer recognizes merit system principles as reflected in 5 U.S.C. § 2301(b).

Union Proposal:

Section 17.1 – General. The Employer recognizes merit system principles as reflected in 5 U.S.C. § 2301(b).

Federal personnel management shall be implemented consistent with the following merit system principles:

- (1) Recruitment shall be from qualified individuals from appropriate sources in an endeavor to achieve a workforce from all segments of society, and selection and advancement shall be determined solely based on relative ability, knowledge, and skills, after the fair and open competition which assures that all receive equal opportunity.
- (2) All employees and applicants for employment shall receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
- (3) Equal pay shall be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition shall be provided for excellence in performance.
- (4) All employees shall maintain high standards of integrity, conduct, and concern for the public interest.
- (5) The Federal workforce shall be used efficiently and effectively.
- (6) Employees shall be retained based on the adequacy of their performance, inadequate performance shall be corrected, and employees shall be separated who cannot or will not improve their performance to meet required standards.

- (7) Employees shall be provided effective education and training in cases where such education and training would result in better organizational and individual performance.
- (8) Employees shall be-
- A. protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
 - B. prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.
- (9) Employees shall be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidence-
- A. a violation of any law, rule, or regulation, or
 - B. mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

The Agency claims its proposal responded to the Union's insistence on having an article on the Merit Systems Principles of 5 U.S.C. § 2301 of the Civil Service Reform Act (Act) and is nothing more than a cite reference. The Act created the Merit Systems Protection Board (MSPB) to enforce the Merit System Principles. The MSPB hears complaints alleging an agency violated the Merit System Principles by committing a prohibited personnel practice while taking corrective or disciplinary action against an employee. The interpretation of the Merit System Principles is best addressed through the numerous MSPB decisions and studies. The Panel orders the parties to withdraw their proposals as these matters are already covered by the Act.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated in the above Panel opinion.



Martin H. Malin
FSIP Chairman

February 22, 2022