

**64 FLRA No. 48**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 3584  
COUNCIL OF PRISON LOCALS C-33  
(Union)

and

UNITED STATES  
DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL INSTITUTION  
DUBLIN, CALIFORNIA  
(Agency)  
  
0-NG-2986

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DECISION AND ORDER  
ON NEGOTIABILITY ISSUES

December 15, 2009

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Before the Authority: Carol Waller Pope, Chairman,  
and Thomas M. Beck and Ernest DuBester, Members

**I. Statement of the Case**

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2424 of the Authority's Regulations, and concerns the negotiability of two proposals.<sup>1</sup> Although the Agency did not timely file a statement of position (SOP),<sup>2</sup> the Union timely filed a response.

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1. The petition for review contains a third proposal, Proposal 11, as to which the Agency's sole claim is that the proposal is covered by the parties' agreement. Petition, Written Declaration of Nonnegotiability, Attachment 1. This claim raises a "bargaining obligation dispute," as defined in § 2424.2(a)(1) of the Authority's regulations and, under § 2424.2(d) of the regulations, an appeal "that concerns only a bargaining obligation dispute may not be resolved under [negotiability proceedings]." *Accord Antilles Consol. Educ. Ass'n*, 61 FLRA 327, 331 (2005). Accordingly, we dismiss the petition as to Proposal 11. *See id.*

2. The Agency did not timely file its SOP, and its motion to waive the expired time limit was denied. Accordingly, we consider only the arguments the Agency presented in its written statement of nonnegotiability. In accordance with Authority precedent, we also consider the Union's timely response. *See Marine Engineers Beneficial Assoc., Dist. No. 1-PCD*, 60 FLRA 828, 829 (2005) (Authority considered Union's response when Agency did not file timely SOP).

For the reasons that follow, we dismiss the petition for review of Proposals 2 and 6 without prejudice.

**II. Background**

The proposals arose during negotiations over the impact and implementation of the Agency's relocation of the Western Regional Office from Dublin, California to Stockton, California, a distance of 52 miles. The relocation affects 18 unit employees who perform administrative functions. Conference Report (Conf. Report) at 1.

**III. Proposals****A. Proposal 2**

If relocation expenses are paid for any employee, they will be paid for all [eligible] employees.<sup>3</sup>

Petition for Review (Petition) at 4.

**1. Positions of the Parties**

The Agency contends, without explanation, that Proposal 2 is "outside the scope of bargaining and/or impermissibly interferes with management rights as provided for in Title 5, United States Code." *Id.*, Attachment 1.

According to the Union, the Agency's Relocation Department is using postal ZIP codes to determine whether relocation expenses are paid, which is "questionable" because similarly situated employees have been treated differently. Response at 1-2. The Union argues that, although the Agency has "broad discretion concerning relocations, [it] must adhere to the laws, rules and regulations that protect employees from discriminatory treatment[.]" *Id.* at 2.

**2. Meaning of Proposal 2**

The parties agree that, under this proposal, if the Agency decides to pay relocation expenses to any bargaining unit employee, then it will be required to pay relocation expenses to all employees who are eligible under Federal regulations.

**B. Proposal 6**

A satellite office will be maintained in the Dublin area for bargaining unit employees to bid on by seniority, to perform duties that cannot be performed from home through telecommuting or flexiplace arrangements.

Petition at 5.

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3. The Union revised its proposal to include the word "eligible" at the post-petition conference. Conf. Report at 2.

### 1. Positions of the Parties

The Agency asserts that Proposal 6 excessively interferes with management's rights to assign work and assign employees. *Id.*, Attachment 1.

The Union argues that the proposal is an appropriate arrangement for employees adversely affected by the Agency's decision to relocate their duty-station to a facility over 50 miles away. *Id.* at 5. The Union states that Proposal 6 is designed to allow some employees the options of telecommuting or working from a satellite office, thereby alleviating the effects of an increased commute on transportation costs and child care issues. *Id.* at 5, 7. The Union contends that Proposal 6 is an appropriate arrangement because it would "not affect most employees' duties" and the Agency has space available for the proposed satellite office in an existing facility. *Id.* at 5; Response at 2-3.

### 2. Meaning of Proposal

The parties agree that Proposal 6 requires the Agency to create a satellite office in Dublin, California and that the parties would negotiate guidelines for employee assignment to the Dublin office. Conf. Report at 3.

## IV. Analysis and Conclusions

Under § 2424.32 of the Authority's Regulations, the Union has the burden of "raising and supporting arguments that the proposal . . . is within the duty to bargain[.]" 5 C.F.R. § 2424.32(a). Likewise, the Agency has the burden of "raising and supporting arguments that the proposal . . . is outside the duty to bargain[.]" 5 C.F.R. § 2424.32(b). In this case, both parties have failed to meet these burdens.

With regard to Proposal 2, the Agency's statement of nonnegotiability fails to state which of management's rights is affected by the proposal or explain why the proposal is otherwise outside the duty to bargain. For its part, the Union addresses only the merits of the proposal. With regard to Proposal 6, the Agency makes an unsupported assertion that the proposal affects management's rights to assign employees and work; the Union argues that the proposal is an appropriate arrangement for employees adversely affected by the Agency's relocation. However, under Authority precedent, the geographical location where employees or organizational units conduct agency operations affects management's right to determine its organization, not its right to assign employees or work. *See, e.g., NFFE, Local 7*, 53 FLRA 1435, 1438-39 (1998).

As both parties have failed to satisfy their obligations, the Authority is unable to determine whether the proposals are within the duty to bargain. In previous, similar circumstances, the Authority has dismissed petitions for review without prejudice to the union's right to refile the petition if requirements governing refiling are satisfied. *See Patent Office Prof'l Ass'n*, 56 FLRA 69, 99-101 (2000) (Chairman Wasserman and Member Cabaniss dissenting separately as to other matters). Consistent with this precedent, we dismiss the petition for review as to Proposal 2 and Proposal 6 without prejudice.

## V. Order

The petition for review as to Proposal 2 and Proposal 6 is dismissed without prejudice.