

66 FLRA No. 16

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 400
(Union)

and

UNITED STATES
DEPARTMENT OF THE ARMY
HEADQUARTERS, 10th MOUNTAIN
DIVISION – LIGHT INFANTRY
FORT DRUM, NEW YORK
(Agency)

0-NG-3080

DECISION AND ORDER
ON A NEGOTIABILITY ISSUE

August 31, 2011

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

I. Statement of the Case

This case 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 concerns the negotiability of one proposal. The Agency filed a statement of position (SOP), to which the Union filed a response (response). The Agency filed a reply (reply) to the Union's response.

For the reasons that follow, we find that the proposal is outside the duty to bargain. Accordingly, we dismiss the petition for review (petition).

II. Background

This dispute arose when the Union submitted a number of proposals in response to the Agency's proposed implementation of the Army Civilian Police and Security Guard Program (Army Regulation (AR) 190-56). SOP at 2. After the Union filed the petition, the parties agreed to use the assistance of the Authority's Collaboration and Alternative Dispute Resolution Office (CADRO). Record of Post-Petition Conference (Record) at 1. With the facilitation of a CADRO representative,

the parties reached partial agreement. *Id.* As a result, only one proposal, Proposal 17, remains in dispute.

III. Proposal 17

The parties recognize that Employees' jobs as law enforcement officers put them at risk in the community while off duty. Management will reimburse each Employee one-time for all fees related to obtaining permit for a handgun and up to \$600 toward the purchase of one handgun.

- a. Management will reimburse each Employee for 100 rounds of ammunition annually.
- b. Reimbursement for any of the foregoing will be prompt after the Employee provides receipts.

Petition at 20.

IV. Positions of the Parties**A. Agency's SOP**

The Agency asserts that the proposal does not affect bargaining unit employees' conditions of employment. SOP at 3. According to the Agency, there is no direct connection between the proposal and the employees' work situation because the proposal "addresses the reimbursement of costs associate[d] with a private wholly discretionary, completely unsupervised election to buy a gun and ammunition." *Id.* The Agency argues that personal weapons do not concern conditions of employment. *Id.* (citing *AFGE, AFL-CIO, Local 1917*, 4 FLRA 150, 153 (1980) (*AFGE, Local 1917*)). According to the Agency, Proposal 17 has an identical effect to the proposal that the Authority found nonnegotiable in *National Treasury Employees Union*, 58 FLRA 611, 613 (2003) (Chairman Cabaniss concurring) (*NTEU*). SOP at 4. The Agency claims that employee safety is not compromised because an employee may be issued an official handgun for off-duty use if the employee is presented with a credible and specific threat. *Id.* (citing SOP, Attach. 1, AR 190-14, Chapter 2, Section 1, ¶ 2-2(d)).

The Agency further asserts that the proposal is nonnegotiable because it is contrary to various appropriations laws. *Id.* at 5. The Agency contends that appropriated funds may not be used for personal

equipment unless the item primarily benefits the government, i.e., when it is “essential to the transaction of official business from the agency’s standpoint.” *Id.* (quoting *AFGE, Local 1547*, 55 FLRA 684, 685 (1999) (*AFGE, Local 1547*)). The Agency also argues that, pursuant to 29 U.S.C. § 668(a) and 5 U.S.C. § 7903, an agency may not reimburse an employee for safety-related equipment unless it is to be used for “the employees’ protection in the performance of hazardous agency work.” *Id.* (quoting *Int’l Bhd. of Teamsters, Truck Drivers, Warehousemen & Helpers of Jacksonville, Local Union 512*, 32 FLRA 1200, 1205 (1988)). According to the Agency, the proposal primarily benefits the employees rather than the Agency because the handguns would be the personal property of the employees and would not be used in the performance of official duties. *Id.* at 5-6.

B. Union’s Response

The Union contends that the proposal does concern bargaining unit employees’ conditions of employment. Response at 2. The Union argues that the proposal is an appropriate arrangement intended to offset the Agency’s exercise of its right to determine internal security. *Id.* The Union asserts that the safety of the employees is compromised as a result of their official duties. *Id.* According to the Union, the handguns would not primarily be used for the employees’ personal benefit because the handguns are necessary as a direct result of their employment. *Id.* at 3. The Union also claims that maintaining employee safety does benefit the Agency. *Id.* In this regard, the Union argues that the Agency has a responsibility to the employees who, as a result of their employment, are “targets off-duty.” *Id.* The Union contends that the Agency should not wait until an incident occurs before providing the employees with personal handguns. *Id.* at 3-4.

C. Agency’s Reply

In reply to the Union’s response, the Agency contends that the Union did not adequately respond to its arguments that the proposal does not affect conditions of employment and violates law, and requests that the Authority dismiss the Union’s petition for review under 5 C.F.R. § 2424.32(c)(2). Reply at 3.

Additionally, the Agency notes that it “never raised the exercise of a management right in relation to the negotiability of this proposal.” *Id.* at 5. However, the Agency asserts that the proposal is not an arrangement; in this regard, the proposal has no relationship to the Agency’s right to determine internal security practices because it concerns handguns that are used off-duty. *Id.* at 5-6. The Agency also argues that, even if the proposal

is an arrangement, it is not appropriate because it is not sufficiently tailored. Specifically, the Agency claims that the employees’ concern about safety as a result of their employment is speculative. *Id.* at 6-7. The Agency also observes that it has not limited the ability of off-duty officers to obtain personal weapons. *Id.* at 7. The Agency contends that the Union only addresses the perceived need for a handgun rather than the costs to the Agency of obtaining one. *Id.* at 8.

V. Analysis and Conclusion

A. Meaning of the proposal.

The parties agree that the proposal seeks to require the Agency to reimburse employees one time for the purchase of a personal handgun, as well as for all fees and permits related to its purchase. Record at 2. The proposal also would require the Agency to reimburse employees for 100 rounds of ammunition annually for use with that handgun. *Id.*

B. The proposal does not concern a condition of employment.¹

Section 7103(a)(12) of the Statute defines “collective bargaining,” in pertinent part, as the parties’ mutual obligation to bargain “with respect to . . . conditions of employment,” and § 7103(a)(14) defines “conditions of employment,” with exclusions not relevant here, as “personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions.” 5 U.S.C. § 7103(a)(12), (a)(14). In determining whether a proposal concerns conditions of employment of bargaining-unit employees, the Authority applies the two-factor test set forth in *Antilles Consolidated Education Ass’n*, 22 FLRA 235, 236-237 (1986) (*Antilles*). Under this test, the Authority determines whether: (1) the proposal pertains to bargaining-unit employees; and (2) “the record establishes that there is a direct connection between the proposal and the work situation or employment relationship of bargaining unit employees.” *Id.* To identify a direct connection, the Authority “inquires into the extent and nature of the effect of the [proposal] on working conditions,” determining whether there is a

¹ We reject the Agency’s contention that the Union’s petition should be dismissed pursuant to § 2424.32(c)(2), which states that a party’s “[f]ailure to respond to an argument or assertion raised by the other party will, where appropriate, be deemed a concession to such argument or assertion.” 5 C.F.R. § 2424.32(c)(2); see also *Tidewater Va. Fed. Emps. Metal Trades Council*, 58 FLRA 561, 562 n.4 (2003). In this regard, the Union expressly disputes the Agency’s claim that the proposal does not concern conditions of employment. See Response at 2.

“link” or “nexus” between the subject matter of the proposal and unit members’ work situation or employment relationship. *U.S. Dep’t of the Army, Aviation Sys. Command, St. Louis, Mo.*, 36 FLRA 418, 422-24 (1990) (quoting *AFGE, Local 2761 v. FLRA*, 866 F.2d 1443, 1445, 1449 (D.C. Cir. 1989)).

In *NTEU*, the Authority found that a proposal that would require an agency to pay for a personally owned, off-duty weapon did not affect conditions of employment. *NTEU*, 58 FLRA at 613. In this regard, the Authority found that, because the firearms were personally owned and were not required or permitted to be used in the performance of the employees’ official duties, the proposal was nonnegotiable. *Id.* Similarly, the Authority has found proposals that would require an agency to store employees’ personally owned weapons while they are on-duty to be nonnegotiable because they do not affect conditions of employment. *NFFE, Local 1214, Fed. Dist. 1, Int’l Ass’n of Machinists & Aerospace Workers*, 58 FLRA 601, 603 (2003) (*NFFE, Local 1214*); *AFGE, Local 1917*, 4 FLRA at 153.

There is no dispute that the proposal pertains to bargaining unit employees. However, the proposal does not meet the second factor of the *Antilles* test. In this regard, Proposal 17 is nearly identical to the disputed proposal in *NTEU* and would similarly require the Agency to purchase handguns that would be personally owned by the employees and used during off-duty time. Petition at 20. Although the Union argues that the handguns are necessary because the employees are “readily identifiable” as officers and are “targets off-duty due to the nature of their on-duty responsibilities and positions,” Response at 3, the Authority rejected a similar argument in *NFFE, Local 1214*. 58 FLRA at 602 (rejecting the union’s argument that the employees “are police officers 24 hours a day”). Additionally, the Union has failed to establish the requisite direct connection between the personally owned handguns and any aspect of the employees’ official duties. Accordingly, we find that the proposal is outside the duty to bargain because it does not affect conditions of employment. See *NTEU*, 58 FLRA at 613.

VI. Decision

Because the proposal is outside the duty to bargain, the petition is dismissed.²

² Because all of the portions of Proposal 17 would be nonnegotiable, there is no need to address the Union’s request to sever Proposal 17. See *AFGE, Local 3240*, 58 FLRA 696, 698 n.3 (2003). In addition, because the proposal is inconsistent with law, we find it unnecessary to address the Agency’s remaining arguments. Moreover, we find it unnecessary to address the Union’s argument that the proposal constitutes an appropriate arrangement because the Agency has not asserted that the proposal is contrary to any management right. SOP at 6; Reply at 5.