66 FLRA No. 73

NATIONAL FEDERATION
OF FEDERAL EMPLOYEES
LOCAL 2199
INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS
FEDERAL DISTRICT 1
(Union)

and

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
GULF ISLANDS NATIONAL SEASHORE
GULF BREEZE, FLORIDA
(Agency)

0-NG-3111

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DECISION AND ORDER
ON A NEGOTIABILITY ISSUE

December 16, 2011

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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). The appeal involves the negotiability of one proposal.[1] The Agency filed a statement of position (SOP), to which the Union filed a response (response). The Agency also filed a reply to the response (reply).

For the reasons that follow, we find that the proposal is outside the Agency's duty to bargain, and dismiss the Union's petition for review (petition).

II. Background

The proposal arose in response to the Agency's announcement that it would require certain employees who previously reported to the Agency's Gulf Coast duty station in Florida to permanently report to its Fort Pickens/Santa Rosa/Pensacola Beach duty station. Record of Post-Petition Conference (Record) at 1. The two stations are 7.7 miles apart. *Id.* There is a one-dollar toll to access the island where the new duty station is located, but no toll to leave the island. *Id.* at 2. Employees may purchase an annual pass for fifty dollars that allows them to access the toll bridge to the island for an entire year. *Id.*[2]

III. Proposal

A. Wording

> For employees who don't have an assigned GOV or there is no GOV available will be reimbursed [sic] for the toll(s) for individual trips to Fort Pickens/Santa Rosa/Pensacola Beach or the Agency will reimburse employees for the annual pass.

Petition at 2; *see also* Record at 1-2.

B. Meaning

The Union explains that the term "GOV" refers to government-owned vehicles, and that the term "Fort Pickens/Santa Rosa/Pensacola Beach" refers to one duty station (Fort Pickens duty station). Record at 2. The Union also explains that the proposal would require the Agency to reimburse employees for their daily commuting expenses, specifically, for the tolls that they incur when they use their privately owned vehicles to drive to the Fort Pickens duty station. *Id.* The Agency does not dispute the Union's explanation. *Id.*

IV. Positions of the Parties

A. Agency

The Agency disputes an assertion by the Union that the Agency "abandoned the basis for its allegation of non-negotiability" because its SOP does not rely on a claim that it previously made to the Union in a meeting -- specifically, that the proposal conflicts with 29 U.S.C. Chapter 9. Reply at 2; Response at 2. In this connection, the Agency claims that it "has consistently contended that the Union's proposal is non-negotiable because it is illegal." Reply at 2 (emphasis omitted). The Agency also claims that the proposal is inconsistent with the Federal Travel Regulation (FTR), 41 C.F.R. part 300-1, and 5 U.S.C. § 5702, because it requires the Agency to pay commuting expenses incurred by

[1] At the post-petition conference, the Union confirmed that it had withdrawn one of the two proposals contained in its petition for review. Record of Post-Petition Conference at 1. Thus, only one proposal remains at issue.

[2] We note that the Union challenges the accuracy of the Record, specifically, the name of the previous duty station and the distance between the two duty stations. Response at 1. As these alleged inaccuracies do not bear on the negotiability of the proposal, we do not address these arguments further.

employees who are not engaged in official business.[3] SOP at 4-6. The Agency further argues that 41 C.F.R. § 302-2.6 "does not authorize payments for commuting costs."[4] *Id.* at 5-6. Finally, the Agency asserts that "[t]he illegality of the proposal means [that] it is not an appropriate arrangement." Reply at 11.

B. Union

The Union argues that the Agency "abandoned the basis for its allegation of non-negotiability" because, in a previous meeting with the Union, it asserted that the proposal conflicted with 29 U.S.C. Chapter 9, but does not rely on that argument in its SOP. Response at 2. The Union also argues that the Agency does not cite "a specific law or regulation that prohibits the . . . proposal." *Id.* at 6. In this connection, the Union maintains that Authority precedent requires agencies to demonstrate that a law or regulation "directly prohibits" a proposal. *Id.* at 4. Finally, the Union alleges that the proposal is an appropriate arrangement under § 7106(b)(3) of the Statute. *Id.* at 2-4.

V. Preliminary Issue

With respect to the Union's claim that the Agency "abandoned the basis for its allegation of non-negotiability," *see* Response at 2, to the extent that the Union is arguing that the Agency's SOP is deficient, there is no requirement that an agency repeat in its statement of position the claims that it made in its allegation of non-negotiability. Instead, the Authority requires an agency to specify its arguments and authorities in its statement of position. *See Nat'l Air Traffic Controllers Ass'n*, 66 FLRA 213, 213 (2011) (citing 5 C.F.R. § 2424.24(c); *Prof'l Airways Sys. Specialists*, 61 FLRA 97, 98 (2005)). In its SOP, the Agency argues that the proposal is inconsistent with the FTR and 5 U.S.C. § 5702 because it requires the Agency to pay commuting expenses incurred by employees who are not engaged in official business. SOP at 4-6; *see* 5 C.F.R. § 2424.24(c). This satisfies the Authority's requirements, and, accordingly, we find that the Union's assertion provides no basis for finding the Agency's SOP deficient.

VI. Analysis and Conclusions

The payment of employee travel expenses is governed by the Travel Expense Act (TEA), 5 U.S.C. §§ 5701-5752, and the FTR. *See U.S. Dep't of the Treasury, Internal Revenue Serv., Plantation, Fla.*, 64 FLRA 777, 780 (2010); *Soc. Sec. Admin.*, 63 FLRA 313, 315 (2009) (citing *Naval Public Works Ctr., San Diego*, 34 FLRA 750, 754 (1990)). Under the TEA, when an employee is "traveling on official business away from the employee's designated post of duty," he or she is entitled to reimbursement for "the actual and necessary expenses of official travel." 5 U.S.C. § 5702(a)(1). The FTR provides, in relevant part, that an agency "may pay only those expenses essential to the transaction of official business." 41 C.F.R. § 301-2.2. Thus, employees not engaged in official business must bear the commuting costs between their residences and official duty stations -- even where the transfer from one duty station to another has increased those costs. *See NAGE, Local R14-87*, 21 FLRA 905, 906 (1986); *see also AFGE, Local 3006*, 47 FLRA 155, 159-61 (1993); *U.S. Customs Serv., Chi.-O'Hare*, 23 FLRA 366, 367 (1986).

The proposal requires the Agency to reimburse employees for commuting costs incurred due to a transfer from one duty station to another. Record at 1-2. The Union does not claim, and there is no indication in the record, that employees are engaged in official business during their commutes. Thus, the proposal requires the Agency to pay the travel expenses of employees not engaged in official business. As the TEA and FTR directly prohibit payment of such expenses, *see, e.g.*, 5 U.S.C. § 5702(a)(1); 41 C.F.R. § 301-2.2, we find that the proposal is contrary to law. Accordingly, we dismiss the Union's petition.[5]

VII. Order

The petition for review is dismissed.

[3] The pertinent wording of the FTR and 5 U.S.C. § 5702 is set forth *infra*.

[4] 41 C.F.R. § 302-2.6 provides, in pertinent part: "[Y]ou may not be reimbursed for relocation expenses if you relocate to a new official station that does not meet the [fifty]-mile distance test."

[5] 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. *See AFGE, Local 400*, 66 FLRA 68, 70 n.2 (2011). We also find it unnecessary to consider the Agency's argument concerning 41 C.F.R. § 302-2.6.