

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

SOCIAL SECURITY ADMINISTRATION
MID-ATLANTIC PAYMENT SERVICE
CENTER
PHILADELPHIA, PENNSYLVANIA

and

LOCAL 2006, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 16 FSIP 51

DECISION AND ORDER

Local 2006, 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 Social Security Administration, Mid-Atlantic Payment Service Center, Philadelphia, Pennsylvania (Employer or MAPSC).

Following an investigation of the Union's request for assistance, which involves a dispute over unpaid meal periods and leave, the Panel determined that the matter should be resolved through written submissions with rebuttals. The parties were informed that, after considering the entire record, the Panel would take whatever action it deemed appropriate to resolve the dispute, which may include the issuance of a binding decision. The Panel has now considered the entire record, including the parties' final offers, written submissions, and rebuttal statements.

BACKGROUND

The Employer's mission is to process Social Security claims and issue payments. The Union represents approximately 880 employees who hold positions in technical, administrative and clerical fields; they are part of a nationwide consolidated bargaining unit consisting of 50,000 employees. The parties are

governed by a master collective bargaining agreement (MCBA) that is scheduled to expire in July 2016. They do not have a local supplemental agreement.

On May 29, 2015,^{1/} the Employer notified the Union that it intended to require all MAPSC employees to comply, by July 1, 2015, with Social Security Personnel Policy Manual (PPM), S610_3, Section 5.3, concerning unpaid meal periods.^{2/} This section, which precludes Social Security Administration (SSA) employees from taking unpaid meal periods during the last 2 hours of their tour of duty, has been in effect for 34 years. The *status quo* at the MAPSC, however, has been to permit

1/ At some point before this date, the Employer attempted to unilaterally implement its proposed change, prompting an unfair labor practice charge from the Union. To settle the charge, the Employer rescinded the proposed implementation and agreed to provide the Union with formal notice and an opportunity to bargain.

2/ PPM, S610_3, Section 5.3, issued in 1982, states in relevant part:

An unpaid meal break of at least $\frac{1}{2}$ hour must be taken by all full-time employees Normally, this unpaid meal break should be established in the middle of the workday and may not be scheduled during the first 2 hours or last 2 hours of the work schedule. Once established, unpaid meal breaks may be temporarily changed to accommodate operational need. An unpaid meal break may be waived by the delegated official if a full-time employee is expected to work 6 consecutive hours or less that span the midday lunch break.

If a $\frac{1}{2}$ hour unpaid meal break has been established for employees with an 8 hour tour of duty, they must account for an $8\frac{1}{2}$ hour day (8 hour workday + $\frac{1}{2}$ hour unpaid meal break= $8\frac{1}{2}$ hour day). If a $\frac{3}{4}$ hour unpaid meal break has been established for employees with an 8 hour tour of duty, they must account for an $8\frac{3}{4}$ hour day (8 hour workday + $\frac{3}{4}$ hour unpaid meal break= $8\frac{3}{4}$ hour day). If an hour unpaid meal break has been established for employees with an 8 hour tour of duty, they must account for a 9 hour day (8 hour workday + 1 hour unpaid meal break=9 hour day).

employees to work 7 straight hours in an 8-hour tour of duty without taking a meal period and then, if they wish to depart early for the day, to use only 1 hour of leave. Thus, in essence, employees would not have to account for their meal period. In effect, employees would only need to take 1 hour of leave but they were permitted to leave work 1½ hour before the end of their duty day. In accordance with the Employer's interpretation of the PPM, management wants to discontinue this practice and require employees to use 1½ hours of leave in order to account for their meal period under the foregoing circumstance.

ISSUE

The parties disagree over whether to retain the practice of allowing employees to append a 30-minute lunch break to leave taken at the end of their duty day.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes to retain the *status quo*. It does not dispute that the PPM prohibits unpaid meal periods during the last 2 hours of a tour of duty. Nevertheless, in the Union's view, the Employer has offered no justification for altering the existing past practice that has been in place by mutual agreement since 1994. The practice arose at that time because employees were required to take meal periods at designated times. As a result, "several" employees found themselves forced to take their unpaid meal period after 7 hours of work. Under those circumstances, the Employer agreed it did not make sense to force those employees to account for their meal periods if they wished to use leave after they worked 7 hours. Although the Employer now allows all employees to start lunch anytime during a flexible time band between 11:30 a.m. and 1 p.m., the Union maintains that an employee still could conceivably work 7 uninterrupted hours and need to leave early for the day. Thus, in the Union's view, the *status quo* remains quite relevant. It does not create any "undue burdens" or problems for management, and the Employer has not identified any "new regulations" that would forbid the current arrangement. The Employer's proposal could "adversely" affect employees because it would require them to use more leave than they are accustomed to using. The Union views the Employer's position as one borne out of blind adherence to the PPM. Employees should be permitted to work 8

uninterrupted hours and then leave for the day without being required to account for their meal period.

2. The Employer's Position

The Employer proposes to implement PPM S610_3, Section 5.3 in its entirety without deviation within one pay period, or 2 weeks, following the date of a Panel decision. The provision states, unambiguously, that employees may not schedule an unpaid meal break during the final 2 hours of their daily tour of duty. In the Employer's view, the *status quo* runs afoul of this requirement because it permits employees to "append" their meal period onto any leave requests that are taken during the last 2 hours of their tour of duty. That is, their lunch period effectively becomes intertwined with leave. No other SSA facility in the country permits the practice. Allowing such a disparity to remain in place, therefore, would be inconsistent with the MCBA requirement that all employees be treated "fairly and equitably." Additionally, because MAPSC employees now may take their unpaid meal break at any time during a daily 90-minute time band, there is no practical need for the *status quo* to continue. The MAPSC must be brought into conformity with the rest of the nation.

CONCLUSION

Having carefully considered the evidence and arguments presented in support of the parties' positions, we find that a compromise solution provides a better alternative to resolve the impasse. In this regard, we shall order the *status quo* to continue until January 7, 2017, the end of the leave year for 2016. Thereafter, employees will be required to adhere to PPM, S610_3, Section 5.3.

Although the *status quo* has remained in place for over 20 years, the record reveals that there is little practical need for its continuation. The practice originated in 1994 when employees were restricted to taking their meal periods at designated times, forcing some to have a scheduled lunch break only after working for 7 hours. Currently, however, employees are free to start their meal periods at any time between 11:30 a.m. and 1 p.m. Additionally, the Union identified few adverse consequences that would arise for bargaining-unit employees in the event of the termination of the *status quo*. In this regard, although the Union contends that the elimination of the practice would force employees to use more leave, it is unclear from the record whether such a development would have any significant

impact on leave usage or create hardships among employees who have availed themselves of the practice. The Union also did not show how much more leave employees, on average, would be required to use. Finally, the Union did not present any evidence that establishes the actual number of employees who rely upon the *status quo*. Therefore, we conclude that the continuation of the practice no longer is justified.

While the Panel's *Order* will result in the termination of the *status quo*, we conclude that employees should have more than a 2-week period, as proposed by management, to adjust to the change. In this regard, because bargaining-unit employees may have come to rely upon the existing practice when scheduling their leave, we find that it is appropriate for it to continue through the remainder of the leave year. Moreover, the Employer presented no evidence to suggest that permitting the practice to continue longer than 2 weeks would carry any logistical issues or otherwise impose any administrative burden on management.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the parties to adopt the following to resolve the impasse:

The *status quo* with respect to leave and unpaid meal periods for bargaining-unit employees of the Mid-Atlantic Payment Service Center shall continue until January 7, 2017. Thereafter, bargaining-unit employees are required to adhere to Social Security Personnel Policy Manual (PPM), S610_3, Section 5.3.

By direction of the Panel.



Donna M. DiTullio
Acting Executive Director

June 14, 2016
Washington, D.C.