

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

U.S. DEPARTMENT OF THE AIR FORCE  
SEYMOUR JOHNSON AIR FORCE BASE

And

NATIONAL ASSOCIATION OF INDEPENDENT  
LABOR, LOCAL 7

Case No. 19 FSIP 028

DECISION AND ORDER

This case, filed by the U.S. Department of the Air Force, Seymour Johnson Air Force Base (Agency) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, concerns a dispute over a successor Collective Bargaining Agreement (CBA). The mission of the Agency is to train, produce, and project airpower for the United States. The National Association of Independent Labor, Local 7 (Union) represents a bargaining unit consisting of approximately 445 non-professional General Schedule, Wage Grade, and Wage Leader employees. The majority of the bargaining-unit employees are Air Reserve Technicians (ART). An ART works as a "dual status" employee, working full-time as a civil service employee, who primarily work as mechanics on aircrafts. One weekend a month, ARTs perform reservist duty to maintain military status. The parties' current CBA, which expired on October 9, 2018, continues to roll over and remain in effect until a successor agreement is implemented.

## BARGAINING AND PROCEDURAL HISTORY

The parties met a total of six times, face-to-face, including five times with the Federal Mediation and Conciliation Service (FMCS) to negotiate over a successor CBA: October 23 to October 26, 2018. The parties tentatively agreed to 48 out of 61 articles and 9 out of 10 appendices. At the conclusion of the first negotiation session, the parties agreed to use FMCS Mediator Greg Tipton for the remaining sessions. The parties met on November 6 and November 7, 2018, with the Mediator. The parties tentatively agreed to five out of the remaining thirteen articles. The parties met on December 18 and 19, 2018, and tentatively agreed to two out of the remaining eight articles that were outstanding. The parties met again on January 23 to January 25, 2019, on February 25, 2019, and on February 26, 2019. The parties tentatively agreed to three of the remaining six articles, leaving three articles and an appendix in dispute. That same day, the Mediator released the parties. On March 11, 2019, the Agency filed the instant request for Panel assistance.

On April 30, 2019, the Panel asserted jurisdiction over the three articles and an appendix contained in the parties' successor CBA. The Panel directed the parties to resolve the dispute through a one-day Informal Conference with Member David R. Osborne at the Panel's Office in Washington, D.C. on July 19, 2019. During the Conference, the parties were unable to resolve the issues in dispute. Therefore, Member Osborne ordered the parties to submit their final offers and written positions, limited to 10 double-spaced pages, along with any authority relied upon to the Panel by August 2, 2019. The parties were also ordered to submit written rebuttal statements, if any, limited to five double-spaced pages, to the Panel by August 12, 2019. The parties timely provided their final offers, written positions, and rebuttal statements, which were considered by the Panel.

## FINAL OFFERS AND POSITIONS OF THE PARTIES

### 1. Article 8, Section 2, Union Representation

#### a. Agency's Final Offer

All other Union Representatives, other than the President or Acting President, will have a bank of 100 hours to use to conduct representational functions in a single year and any unused time will not carry over into the next calendar year.

The Agency is proposing to cap the amount of official time used by the Union's 15 representatives to 100 hours per year. The CBA permits the Union representatives "reasonable time without charge to leave to perform representation." At the Informal Conference, the Agency stated that it does not have a record of the amount of official time used by the Union's 15 representatives because they did not document their time. The Agency, however has records of the official time recorded and used by the Union President since the inception of the current agreement (October 2015).

From October 2015 to the time the Agency filed the request for Panel assistance, the Agency stated that the Union President has engaged in the following representation activities: four Unfair Labor Practice charges; ten grievances; one arbitration; seven information requests; and six or seven instances of bargaining over mid-term changes. To perform these functions, the Agency calculated that the Union President averaged 28 hours per pay period of official time during the term of the current CBA, or 728 hours per year. The parties agreed to that amount for the President, so the Agency then multiplied the 728 hours of official time by five percent (the amount of time that the Union President stated she does not engage in Union activity) to arrive at 36.4 hours of official time that the other Union representatives should have been using to engage in representation activities. The Agency did not think that 36.4 hours of official time was reasonable to offer the Union. Therefore, it proposed a bank of 100 hours of official time for the Union officers each year during the term of the parties' successor CBA. The Agency contended that its proposal is reasonably justified based on the official time data accumulated by the President since 2015, and the limited amount of representational activity performed by the other Union representatives.

The Agency asserted that the Union has failed to provide relevant information supporting its proposal. To that end, the Agency stated that the Union has failed to justify how the hours sought for representation by Union officials is "reasonable, necessary, and in the public interest" as required by 5 U.S.C. § 7131(d) and explained in *U.S. Social Security Administration and AFGE*, 19 FSIP 019 (2019). The Agency stated that in *U.S. Dep't of Housing and Urban Development and AFGE, Council 222*, 18 FSIP 075 (2019), the Panel rejected a "blank check" proposal for official time.

Finally, the Agency contended that the Union's proposal does not consider the important public interest and rationale underlying Executive Order (EO) 13837, *Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use*, Section 1: "[a]n effective and efficient government keeps careful track of how it spends the taxpayers' money and eliminates unnecessary, inefficient, or unreasonable expenditures. To advance this policy, executive branch employees should spend their duty hours performing the work of the Federal Government and serving the public." The Agency stated that the Union failed to acknowledge the limited resources available to the Agency and, therefore the importance of efficiently using taxpayer funded union time. The Agency further stated that the Union's proposal does not comprehend the importance of documented usage of official time by Agency employees. Conversely, the Agency contended its proposal relies upon the accurate accounting of official time by Union representatives, which ensures transparency and that official time is properly documented.

b. Union's Final Offer

Union representatives will be granted reasonable time off.

The Union stated that the Agency's proposal to limit the representatives time to a bank of 100 hours interferes with, restrains, and coerces employees in exercising their rights under the Statute. The Union is also concerned that the Agency's proposal does not address what might happen if the bank of 100 hours is exhausted and whether the 100 hours applies to statutory official time. Therefore, the Union proposed to maintain the status quo in the current CBA, which provides "reasonable time off."

The Union argued that the Agency has no justification or demonstrated need to change the status quo of granting reasonable official time to Union representatives to perform representational activities. The Union stated that there is no indication that the official time was not properly used by the Union. Regarding the Agency's data, the Union argued at the Informal Conference and in its brief that its representatives are involved in many representational matters that would not show up in the record compiled by the Agency, such as matters that were resolved informally. The Union stated that it cannot predict how much official time is needed to engage in representational activities.

The Union provided an affidavit from its President. She appears to assert that the Agency's official time calculation was not an accurate representation of the amount of official time the Union representatives engaged in because it did not account for holidays, annual, sick, or administrative leave. The President admitted that she performs 95 percent of the Union work, but that the other Union representatives frequently handle representation matters and that the Agency should properly keep records and accounting of the Union's time.

The Union stated that it is not requesting a "blank check" of official time as alleged by the Agency. Instead, a representative must receive permission from their immediate supervisor whenever they wish to perform Union work. The Union asserted that its representatives have used a minimal amount of official time, which was reasonable and necessary to perform representational functions.

The Union cited to a prior Panel Decision, 02 FSIP 206 (2003), involving the *U.S. Department of the Air Force, Seymour Johnson Air Force Base* (the Agency) and the *National Association of Government Employees, Local R5-188* in which the Panel directed the parties to grant the Union President four hours per day, five days per week, official time and the Agency would continue to grant "reasonable amounts of official time to other Union representatives." At that time, there were 350 employees in the bargaining unit. The Union also asserted that in a different bargaining unit at the Agency represented by the National Association of Independent Labor, Local 8, the parties have agreed to allow union representatives "a reasonable amount of official time" and that unit has half as many employees than does the unit subject to this request for Panel assistance (445). Thus, the Union contended that the parties should adhere to the status quo and permit the Union representatives "a reasonable amount of official time."

### c. Conclusion

**The Panel orders the parties to adopt a modified proposal.** The parties' disagreement surrounds the negotiation of official time under 5 U.S.C. § 7131(d) for Union representatives other than the Union President. The parties argued that their proposals are supported by prior Panel Decisions. Prior Panel Decisions can be illustrative of the burden necessary in favor of adopting contact language. However, the Panel is not limited to *stare decisis* and will order language on a case-by-case basis in the best interests of an efficient and effective Federal

government. The Panel has noted that it expects "any party offering a quantitative amount of official time pursuant to § 7131(d) should demonstrate to the Panel why its proposal is reasonable, necessary, and in the public interest."<sup>1</sup> Accordingly, in each case presented to the Panel, the parties must provide support for their proposals and the Panel will weigh the evidence in determining whether to adopt one party's proposal over another.

Here, the Agency proposed that the Union's 15 representatives receive a bank of 100 hours of official time to engage in representational activities. The Agency arrived at the 100 hours by compiling data during the term of the parties' current CBA, which indicated that the Union President engaged in 728 hours of official time each year. Based off this number, the Agency sought to provide the Union's remaining representatives five percent of her official time, because the Union President admittedly performed 95 percent of that Union's work. Therefore, the Agency arrived at 36.4 hours of official time for the Union's officers. Because the Agency felt that number was an insufficient amount of official time for the Union to represent its bargaining unit, it increased its proposal to 100 hours of official time. As indicated by the evidence introduced by the Agency that the Union has engaged in relatively small amounts of representation activities during the term of the parties' CBA, it's clear that the Union can effectively represent its bargaining unit and would not be limited by a bank of hours.

The Union President in her affidavit, while somewhat unclear, seems to be arguing that the official time calculation by the Agency should have accounted for and provided the Union the official time that was not claimed by the President when on leave or during a holiday, thereby entitling the Union to more than 100 hours of official time. However, it is the Union representative's responsibility to identify when official time is needed and properly request and record such time. As the Union is the exclusive representative, it is incumbent on its officers to document official time. Moreover, the existence of a holiday or the use of leave does not preclude the Union from taking the full amount of official time permitted in any given week. The Union President has not provided a statutory or practical basis for inflating the number of official time hours which the Union should receive.

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<sup>1</sup> *SSA and AFGE*, 19 FSIP 019, p. 22 (2019).

The Union only generally asserts that the Agency's official time calculations did not account for all of the Union's representation activities. The Union further tries to support its proposal for "reasonable official time" by asserting that other union representatives in different bargaining units are permitted "reasonable official time." Without knowing what representational activities the other representatives performed in those bargaining units, it makes it difficult to discern whether the circumstances are analogous. Finally, the Union argued that the Agency's proposal interferes with, restrains, and coerces employees in exercising their rights under the Statute; however, the Agency is not prohibiting the Union from utilizing official time to represent its bargaining unit. It is simply proposing that official time will be derived from a bank of hours under the CBA and that bank is "reasonable and necessary".

EO 13837 went into effect on October 3, 2019, as a result of the D.C. Circuit denying the American Federation of Government Employees' petition for rehearing on enjoined provisions in the EOs. The Panel will seek to establish parameters consistent with public policy as expressed in Section 2(j) of EO 13837.<sup>2</sup> As articulated under section 3(a), agreements authorizing official time under section 7131(d) that would cause the union time rate for a fiscal year to exceed 1 is not ordinarily considered reasonable, necessary, and in the public interest. However, the Panel may order a union time rate that exceeds this amount if the Panel determines that it is reasonable, necessary, and in the public interest.<sup>3</sup> The Panel will, on a case-by-case basis, decide how to best apply the requirements of Section 2(j). In doing so, the parties should demonstrate to the Panel the quantitative need for their proposals.

In this case, there are approximately 445 employees in the Union's bargaining unit, which would equate to 445 hours of official time pursuant to Section 2(j) of the EO 13837. In this case, the parties already agreed to provide the President 728 hours per year of official time. This is substantially above the union time rate articulated in EO 13837. Because the Union did not demonstrate the need to the Panel for exceeding the 1 hour per bargaining unit employee requirement, the Panel will require the parties to withdraw their proposals and order that

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<sup>2</sup> Section 2(j) of EO 13837 indicates that the total number of hours that an employee engages in official time shall not exceed 1 hour per bargaining unit employee.

<sup>3</sup> See Section 3(b) (iii) of EO 13837.

the Union's remaining representatives share the 728 hours of official time that the parties agreed to provide the Union President. The bank should be perceived as a cap on section 7131(d) time, but the Agency will grant requests for section 7131(a) and (c) time if the Union exhausts the bank. Finally, the parties should follow the parameters that they have agreed to put in place over documenting and reporting official time within section 3 of Article 8, as this is consistent with section 5(b) and (c) of EO 13837. Accordingly, the Panel imposes the following language:

Pursuant to the parties' agreement over the amount of official time authorized for the Union President, the remaining Union officers will share the 728 hours of official per year under section 7131(a), (c), and (d) of the Statute. The bank of 728 hours will operate as a cap on section 7131(d) time. However, if the bank of hours is exhausted, the Agency will grant requests for section 7131(a) and (c) time.

## 2. Article 53, Section 4, Negotiated Grievance Procedure

### a. Agency's Final Offer

Employee may use this negotiated grievance procedure or they can use the Alternative Dispute Resolution (ADR) procedure for resolving covered matters.

- A. If the Employees choose to advance their grievance through the ADR procedure, it must go through the Union and be submitted within fifteen (15) workdays from the date of the incident.
- B. The Civilian Personnel Section (CPS) will coordinate with the ADR Manager at Seymour Johnson and have assign a qualified mediator from the list of outside mediators who are outside the grievant's organization. The ADR Manager will coordinate the ADR session with all participants. If no resolution can be reached, the employee may continue at step-2 of the grievance procedure.
- C. The ADR procedures may be utilized for any matters that are grievable in accordance with this Article.
- D. If the employee is not satisfied with ADR, the employee may continue at step 2 of the grievance



procedure. Grievances not resolved through the provisions of this Article may be referred to arbitration by either the Union or Employer, in keeping with Article 54, Arbitration.

The Agency's proposal allows an employee to elect to use the ADR procedure to resolve a grievance. At the Informal Conference, the Agency argued that its proposal allows the employee to file a grievance if a settlement agreement is not reached when using ADR. Additionally, the Agency argued this proposed procedure does not interfere with the Union's rights and involvement in the grievance. Therefore, the Agency stated that its proposal does not limit the scope of the Negotiated Grievance Procedure (NGP).

#### b. Union's Final Offer

The Union proposed that the parties adhere to the status quo and utilize the NGP as the sole procedure available to bargaining-unit employees to resolve contractual disputes. The Union argued that the small number of grievances filed under the CBA does not justify changing the NGP. At the Informal Conference, the Union expressed its concern over what it thought was a limitation on the grievance procedure. The Union was also concerned that under the Agency's proposal, the Union would not be involved in the grievance process.

The Union stated that the Agency's proposal creates two procedures for processing grievances: the NGP or the ADR procedure. The Union argued that the Agency's proposal is not consistent with the Statute in that 5 U.S.C. § 7121 requires the parties to utilize grievance procedures as the "exclusive administrative procedures for resolving grievances which fall within its coverage." The Union stated that the Agency's proposal would provide employees the option to choose the ADR procedure in lieu of the grievance procedure. The Union also contended that the Agency's ADR procedure is not expeditious and it can be time consuming to engage in ADR. Finally, the Union stated that the parties have already agreed to consider using the services of FMCS for grievance mediation in Section 15 of Article 53.

#### c. Conclusion

**The Panel orders the parties to adopt a modified version of the Agency's proposal.** The parties disagree over whether ADR should be an option for employees in the NGP. The Union argued that the Agency's proposal seeks to narrow the scope of the

grievance procedure. In actuality, the Agency's proposal broadens the scope of the NGP by providing dispute resolution options at the initial step of a grievance. The Agency's proposal integrates ADR into the grievance procedure, but does not require ADR in lieu of the grievance procedure. Rather, the proposal allows a party to elect to use ADR at the initial step of the grievance procedure, but it is not compulsory.

Furthermore, the Agency's proposal does not limit the employee's rights in pursuing the grievance through the NGP should ADR not produce a satisfactory result for the employee. Specifically, under Sections B and D of the Agency's proposal, the filing party may proceed with the grievance by raising it to the second step if ADR efforts are unsuccessful. Thus, the ADR procedure does not prevent the filing party from raising a matter under the NGP, and consequently, it does not limit or narrow the scope of the grievance procedure.

Turning to the merits, the Union unconvincingly argued that the ADR process is not expeditious and could be time consuming. However, the very essence of ADR is to provide parties with a quick and expeditious resolution at minimal costs and resources. The Union further argued that the Agency's proposal does not allow for Union involvement in the grievance process; however, the Agency's proposal explicitly requires the ADR process to go through the Union. The Agency's ADR process is consistent with an efficient and effective government, as well as statutory mandates that agencies attempt to integrate ADR into its operations.<sup>4</sup> Thus, the Panel requires the parties to adopt the Agency's proposal, but with modification by replacing "employee" with "filing party" to permit the employee, Union, or Agency to initiate the ADR process.

Section 4. The filing party may use this negotiated procedure or they can use the Alternate Dispute Resolution (ADR) procedure for resolving covered matters.

- A. If the filing party chooses to advance their grievance through the ADR procedure, it must go through the Union and be submitted within fifteen (15) workdays from the date of the incident.
- B. The Civilian Personnel Section (CPS) will coordinate with the ADR Manager at Seymour Johnson and have assign a qualified mediator from the list of outside

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<sup>4</sup> Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571-84.

mediators who are outside the grievant's organization. The ADR manager will coordinate the ADR session with all participants. If no resolution can be reached, the filing party may continue at step 2 of the grievance procedure.

C. The ADR procedures may be utilized for any matters that are grievable in accordance with this Article.

D. If the filing party is not satisfied with the ADR, the filing party may continue at step 2 of the grievance procedure. Grievances not resolved through the provisions of this Article may be referred to arbitration by either Union or Employer, in keeping with Article 54, Arbitration.

### 3. Article 57, Section 1 and Appendix H, Physical Fitness

#### a. Agency's Final Offer

Employees may participate in regular Physical Fitness Activities (PFA) up to a maximum of 1.5 hours per week.

The remaining dispute is over the number of hours that employees may receive for physical fitness activities. At the time when the Agency filed the request for assistance, the parties disagreed over section 2H and section 11 within Article 57; however, since that time, the parties have resolved both sections. The Agency believes that a healthier workforce equates to lower health care costs because employees will use less sick leave. In addition, about half of the bargaining unit employees are dual status employees, which means they are civilians during the week, but approximately once a month they must engage in military training. Therefore, the Agency provides employees administrative leave to engage in physical fitness activities.

Currently, the CBA permits the employees 3 hours each week to engage in physical fitness activities. The Agency's proposal permits the employees to engage in 1.5 hours of physical fitness each week. At the Informal Conference, the Agency argued that its proposal complies with 5 U.S.C. § 6329a(b)(1)), which states, "[d]uring any calendar year, an agency may place an employee in administrative leave for a period of not more than a total of 10 work days." The Agency stated that in order to comply with that section of the U.S. Code, the Agency is permitted to place an employee on administrative leave to engage in physical fitness for a period of not more than 10 work days, which equates to 80 hours

for the year. The Agency divided the 80 hours by 52 weeks to arrive at a maximum of 1.5 hours of administrative leave permitted for physical fitness each week. The Agency also proposed to establish the weekly limitation in Appendix H of the successor CBA, which is a form for employees to fill out when requesting to participate in physical fitness activities.

The Agency contended that its proposal offers it and the taxpayer savings by cutting employees' physical fitness time from 3 hours to 1.5 hours. The Agency argued that this reduction in time will increase the amount of work employees are able to accomplish, while also allowing employees to continue to exercise. The Agency stated that the 156 bargaining-unit employees, which the Union asserted at the Informal Conference were interested in engaging in physical fitness activities equates to 468 hours of duty time each week if each employee exercised for three hours a week. Based on the grades of the employees, the Agency stated that this time would conservatively equate to \$9,162.20 a week and \$476,434.4 a year. The Agency contended that if it were to reduce the hours of physical activity permitted each week to 1.5, it would allow the employees to utilize more time performing their duties and cut the costs of the program in half. The Agency also stated that if the Office of Personnel Management (OPM) issues guidance over how agencies should comply with the § 6329a(b)(1) when providing employees administrative leave to engage in physical fitness activities, the Agency has already agreed to bargain with the Union over any required changes.

b. Union's Final Offer

Employees may participate in regular Physical Fitness Activities (PFA) up to a maximum of three (3) hours per week.

It is the Union's position that the current program has been beneficial to the employees and the mission. Therefore, the Union proposed to continue the status quo by permitting employees 3 hours of physical fitness activities per week, which it also proposes to memorize in Appendix H of the successor CBA. The Union contended that OPM is required by 5 U.S.C. § 6329a, to prescribe regulations that provide guidance to agencies regarding acceptable agency uses of administrative leave, the proper recording of administrative leave, and other leave authorized by law. The Union further claimed that the Act directs agencies to "revise and implement the internal policies of the agency" to meet the statutory requirements pertaining to administrative leave no later than 270 calendar days *after the date on which OPM issues its regulations*. The Union

contended that OPM has yet to issue its regulations concerning administrative leave. Until such time, the Union argued that it is questionable whether physical fitness activities are impacted by § 6329a. Further, the Union argued that under 5 U.S.C. § 7901, OPM may consider physical fitness activities as a separate leave category. The Union stated that once OPM issues regulations the parties may revisit this issue pursuant to the agreed-upon language in Article 57, Section 11.

At the Informal Conference, the Union provided an Opinion Memorandum from OPM's Office of the General Counsel in 1998, in which the Union argued that OPM had no objection to the use of official time to engage in physical exercise in 1-hour sessions, three times a week as part of a total fitness program. The Union also provided an email it sent to its bargaining unit, in which the Union claimed that 156 employees responded that they participate in physical fitness activities. During the Conference, the Union stated that employee fitness improves health, decreases sick leave usage, and improves morale and work performance - all of which contribute to enhancing the mission of the Agency. Conversely, the Union stated that a reduction proposed by the Agency could harm employee morale and increase sick leave usage. The Union further argued that the Agency did not demonstrate the need to reduce the amount of physical fitness time authorized to employees.

### c. Conclusion

**The Panel orders the parties to adopt the Agency's proposal.** The parties agree that it is beneficial to the employees and the Agency to provide the employees administrative leave to participate in physical fitness activities. However, the parties disagree over the amount of administrative leave that the Agency will authorize the employees to participate in physical fitness activities.

The Administrative Leave Act of 2016 (Act) enacted under Section 1138 of the National Defense Authorization Act for Fiscal Year 2017<sup>5</sup> created new categories of statutorily authorized paid leave and established parameters for their use by Federal agencies. One of the new statutorily authorized categories of leave, 5 U.S.C. Chapter 63 (5 U.S.C. § 6329a(b)(1)) states, "[d]uring any calendar year, an agency may place an employee in administrative leave for a period of not more than a total of 10 work days." The Agency has interpreted

<sup>5</sup> Pub. L. 114-328, 130 Stat. 2000.

the 10-day restriction on administrative leave to mean that employees cannot receive more than 1.5 hours of administrative leave per week to engage in physical fitness activities. The Union contended that its proposal, which maintains the 3 hours per week of administrative leave for physical fitness activities is not in contradiction with the law because OPM has not issued any regulation or guidance indicating that physical fitness falls under the 10-work day limitation under section 6329a(b)(1)).

First, turning to the merits of the parties' arguments, the Agency contended that its proposal for 1.5 hours of administrative leave per week offers the employees the ability to exercise, while also reducing the cost of the program on the Agency. The Agency supported its argument by providing data, which indicates if it were to reduce the amount of administrative leave in half, based on the number of employees that the Union stated either utilize or are interested in the program (156), it would cut the cost of the administering the program in half. The physical fitness program is beneficial to the employees' morale and well-being, but it should not come at the expense of the Agency or the taxpayer.

The Union claimed that 5 U.S.C. § 7901 permits OPM to consider physical fitness activities as a separate leave category; however, that section does not address leave, but establishes the conditions under which a health service program may be created by an agency. The Union further argued that the OPM General Counsel Opinion Memorandum indicates that the General Counsel, at that time, opined that using administrative leave to engage in physical fitness one-hour, three times a week was permissible. That memorandum was published in 1998. As the Union is well aware, the law has changed since that time. The Administrative Leave Act was enacted in 2016 because Congress was concerned over the use and cost of Federal agencies using administrative leave. Section 6329a(b)(1) was created to cap the amount of administrative leave used. The Act created new categories of administrative leave not subject to the cap, such as investigative and notice leave, and weather and safety leave. If Congress had intended to exempt physical fitness from 10-day cap it would have done so in the statute. Regardless of the circumstances under which section 6329a(b)(1) was created and how it applies, it is clear that the Agency no longer believes offering 3 hours of administrative leave to participate in the program is beneficial to the Agency. Accordingly, because the Agency has supported the merits of its proposal, the Panel orders the parties to adopt the Agency's proposal.

ORDER

Pursuant to the authority vested in 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 provisions as stated above.

By direction of the Panel.



Mark A. Carter  
Chairman, FSIP

November 14, 2019  
Washington, D.C.