

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

Department of Defense Education Activity
Domestic Dependent Elementary &
Secondary Schools

and

National Education Association-
Stateside Region

Case No. 18 FSIP 073

DECISION AND ORDER

The Department of Defense Education Activity, Domestic Dependent Elementary & Secondary Schools (Agency or Management) filed a request for assistance with the Federal Services Impasses Panel (Panel) to consider a negotiation impasse over the remaining articles in a successor collective bargaining agreement (CBA) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §7119, between it and the National Education Association-Stateside Region (Union).

Following an investigation of the Agency's request for assistance, the Panel determined that it would assert jurisdiction over various issues in four articles and an appendix identified in the Agency's request for assistance. It further concluded that the parties' dispute over these issues would be resolved through an Informal Conference. The Informal Conference was held on October 23 and October 25, 2018, in Washington, D.C. and was conducted by Member Karen Czarnecki. The parties were informed that if settlement was not reached during the Informal Conference, Member Czarnecki would notify the Panel of the status of the dispute. The Panel would then take whatever action it deemed appropriate to resolve the impasse, which may include the issuance of a *Decision and Order*. The parties resolved nearly 30 issues but could not reach agreement on 10 matters. Accordingly, Member Czarnecki ordered the parties to submit written submissions by November 9, 2018. Both parties submitted timely submissions.

BACKGROUND

The primary mission of the Agency is to provide elementary and secondary education to children of military employees who reside in the Continental United States,

Puerto Rico and Guam. It operates 57 schools in 15 locations and serves approximately 26,000 students and 4,000 employees. Of that number, approximately 2,500 are professional employees represented by the Federal Education Association–Stateside Region (Union). Although most are classroom teachers, the bargaining unit includes Media Specialists (Librarians); School Psychologists; Speech/Language Therapists; Occupational Therapists; Guidance Counselors and Nurses. The parties are covered by a CBA that was implemented in 2005 and expired in July 2009, but rolls over on an annual basis. The parties have an extensive bargaining history when it comes to the topic of their successor CBA. The Agency’s July 23, 2018, request for assistance in this dispute is the parties’ 4th trip to the Panel since October 2010. On September 11, 2018, the Panel voted to assert jurisdiction over the Agency’s request and to resolve the dispute through an Informal Conference to be conducted by Member Karen Czarnecki in Washington, D.C. on October 23 and October 25.

REMAINING ISSUES

1. Article 18, Section 1(e)¹ – Whether employees must remain at the work site to complete “mutually scheduled” parent-teacher conferences.
2. Article 18, Section 3(f) – Whether the school year may be extended as a result of closures arising from inclement weather or other emergencies.
3. Article 20, Section 3 – Whether pay levels should be tied to certain levels of experience.
4. Article 20, Section 4 – Whether degrees and earned graduate semester hours should impact a teacher’s pay level.
5. Article 22, Section 3(e) – Whether employees assigned to move to a different school or classroom location should receive 1.5 workdays to pack and relocate.
6. Article 22, Section 3(f) – Whether employees assigned to a different grade should receive 1.5 workdays to pack and relocate.
7. Article 22, Section 3(g) – Whether employees assigned to a new subject area should receive “up to” 3 workdays to pack and relocate.
8. Article 22, Section 3(h) – Whether the definition of “subject area” should include a new teaching assignment within the same type of academic discipline.
9. Article 22, Section 3(i) – Whether employees will receive “no more” than 3 workdays in regards to a relocation.

¹ The numbering for all remaining Articles is taken from the Agency’s final offer.

10. Article 22, Section 4 – Whether employees should follow new Management proposed procedures for a school relocation or continue to adhere to the procedures established in a 2017 memorandum of understanding.

PROPOSALS AND POSITION OF THE PARTIES

1. Article 18, Section 1(e), “Parent-Teacher Conferences”

A. Management Proposal

Bargaining unit members are responsible for participation in parent/student conferences and will remain at the worksite to complete such conferences which commence prior to the end of the workday. This requirement pertains to conferences mutually scheduled between a unit member(s) and parent(s)/guardian(s).

B. Union Proposal

Bargaining unit members are responsible to participate in parent/teacher conferences at the worksite which commence prior to the end of the workday. This requirement pertains to conferences mutually scheduled in advance between a unit member and parent/guardians.

C. Management’s Position

This dispute centers on a teacher’s time obligations when participating in a parent-teacher conference. The Agency claims its proposal is based on the premise that educators are “professional employees” who should be expected to manage their time. Thus, when they schedule a parent-teacher conference in advance, they should be expected to see that conference through to the end. Because of this expectation, the Agency argues that teachers should not receive additional compensation if a pre-scheduled meeting goes beyond the duty day. It is up to each individual teacher to ensure that meetings end in a prompt manner. If necessary, local teachers and the Union can consult with local administrators to address situations unique to each school. At the Informal Conference, the Union raised a concern about teacher safety due to minimal staffing at the end of a duty day. In response, Management notes that the parties have tentatively agreed to language elsewhere in the successor CBA that establishes a Managerial contractual duty to ensure the safety of its employees. So, the Union’s safety concerns are sufficiently addressed elsewhere in the parties’ contract.

D. Union’s Position

The Union does not object to a requirement for educators to participate in parent-teacher conferences. However, the Union does object to the expectation that teachers should be required to remain at school with a parent at a time when other faculty members may no longer be present in the building. Such a scenario creates a safety

concern. At the Informal Conference, members of the Union's bargaining team mentioned that incidents occurred in the past where school administrators had to summon security to deal with angry or confrontational parents. Educators are "not in a position to say no" should a parent stop in to talk after classes end. The Union's proposal still permits the Agency to assign parent-teacher conferences after the work day, but teachers would receive appropriate compensation. Management would not be required to compensate teachers should they voluntarily schedule a post-duty parent-teacher conference.

E. Conclusion

The Panel orders adoption of the Agency's proposal. There is no dispute that teachers are expected to conduct parent-teacher conferences as part of their normal duties. The dispute in this proposal turns on what is expected of a teacher when it comes to continuing such a conference that starts prior to the end of the work day but continues on thereafter. In particular, the Union is concerned with employee safety. However, as the Agency notes, the parties have already agreed to language elsewhere in the CBA that requires Management to ensure a safe working environment. Thus, if the Union believes the Agency's proposal places employees in an unsafe environment, the Union has contractual relief in place to address that belief. The Panel also agrees with Management that individual teachers can, with the assistance of local school administration, better address the particulars of parent-teacher conferences at each school. That is, a one-size fits all solution is unnecessary.

2. Article 18, Section 3(f), "Inclement Weather"

A. Management Proposal

If the Agency closes schools on days that are assigned as work days as a part of the work year, due to inclement weather or other emergency, the Agency may extend the work year for an equal number of days without additional compensation to employees.

B. Article 18, Union Proposal

No counter.

C. Union Position

The above proposals are meant to address the topic of "make up" days and compensation when a school is closed due to weather or other emergency reasons. At the Informal Conference, the Union provided a final offer on this topic.² However, afterwards, the Union communicated to the Agency and the Panel that it had "come to

² The language the Union offered was as follows:

[the Union's] attention" that the parties previously reached tentative agreement "regarding the treatment of make-up days for inclement weather and emergencies" in 2 other parts of their successor CBA. The Union asserted that, per the parties' ground rules, tentative agreement means that bargaining has concluded on a topic. Accordingly, in its Post-Hearing brief, the Union takes the position that the language in tentatively agreed to Article 11 and Appendix O (discussed in greater detail below) already covers the topic of Management's proposed Article 18, Section 3(f), i.e., compensation when school is closed. Accordingly, the Union argues that the parties should simply abide by this language, and the Agency should withdraw its proposal. Management has already disagreed with the Union's interpretation. Accordingly, the Union has filed a grievance alleging that the Agency has engaged in bad faith bargaining. And, as there is now an issue and grievance concerning contract interpretation, the Union maintains that the Panel should decline jurisdiction over this topic altogether.

D. Agency Position

The Agency's proposal takes into consideration the fact that the parties have tentatively agreed to a pay schedule in Article 18 that requires employees to work 190-calendar days per year in order to earn their salary. The Agency's proposal combines this schedule with the need to be efficient with taxpayer funds by ensuring that the Agency can stretch school years due to closures. Specifically, the proposal would allow Management the flexibility to schedule teachers to work additional days without extra compensation so long as those teachers are still under the 190-day window. The Agency has relied upon this scenario to address school closures in Puerto Rico as a result of Hurricanes Irma and Maria in 2017. This course of action proved successful there, and there is no reason to believe it would not work with the schools involved in this dispute.

Management rejects the Union's post-Informal Conference claim concerning Article 11 and Appendix O. The language in those sections is meant to address compensation for make up days that occur *beyond* the 190-day window. The Agency's proposal for this section, by contrast, concerns only days *within* the window. The Union's cited language, therefore, is inapplicable.

If the Agency is required to make-up additional instructional days in order to meet accreditation standards due to inclement weather or another emergency, the Agency may extend the work year for an equal number of days without additional compensation. Before assigning make-up days outside the scheduled work year, the agency will utilize the five days designated on the school calendar as potential make-up days within the work year.

E. Conclusion

We will order adoption of the Agency's proposal. At the Informal Conference, the parties offered competing proposals on the topic of make up days. The Union never indicated that it intended to argue that other portions of the parties' successor CBA resolved this dispute. Nevertheless, that is the sole route it now takes. The Union relies upon the following tentatively agreed to language from Article 11, Section 5(b) of the successor CBA:

In the event school is closed during the school year, the [A]gency may re-schedule the day(s) lost from non-instructional days or extend the work of seasonal employees. For any work assigned by the [A]gency under these circumstances outside the work year/day employees will be paid his/her [earned hourly rate]. If a report card day is used as a make-up employees will be paid their earned hourly rate for eight hours for completing grades/reports/progress codes and grade cards/report cards outside the paid duty day. If time to prepare report cards is provided on another non-instructional day, employees will not be paid for the hours provided in addition to their regular pay. In addition employees will be compensated at their earned hourly rate for any work that is required to made up outside the work year to the loss of the non-instructional day, such as responsibilities associated with closing out a quarter or school year.

As part of Article 11, the parties also agreed to include Appendix O in the successor CBA, which contains Policy Letter 04-009, issued August 9, 2004. This policy addresses the authority of the Agency Director or designee to close schools during certain events, including weather, and to place employees on various forms of leave. As relevant, Section 5 of the policy states that the Agency may extend the school year, and Section 6 further states that employees "on a seasonal work schedule will be paid their hourly rate for all days required to be made up beyond the normal work year requirements or as established in applicable" CBAs.

Despite the Union's cited language, the Panel does not believe that the Union has raised a colorable contractual claim that would deprive the Panel of jurisdiction over this topic. Article 11, Section 5(c) – which the Union omits from its analysis – states that employees "on a seasonal work schedule will be compensated in accordance with Article 20, for all days required to be made up *beyond the work year requirements as described in Article 18.*" (emphasis added). This language establishes that compensation under this Article goes to days "beyond" the work requirements already set forth in Article 18. And as noted earlier, the parties have already agreed to a 190-day work year in Article 18. Thus, it is clear that Article 11 is meant to address those situations above the agreed to 190-day window, as the Agency argues.

In summary, the Panel believes that the Union's contractual argument is unsupported. Because the Union has effectively withdrawn its proposal to focus on the

contractual argument, the only remaining proposal is that of the Agency's. Accordingly, the Panel will adopt the Management's proposal to resolve this dispute.

3. Article 20, Section 3, "Pay Setting"

A. Management Proposal

- a. Prior experience for pay setting purposes will be accorded for the life of the [CBA] as reflected on the matrix at Appendix E.
- b. Pay setting for bargaining unit members hired after the effective date of this agreement will be in accordance with the following:
 - (1) Employees will be placed in the pay lane commensurate with degree, or degree plus semester hours (or equivalent quarter hours), in the employee's certified field(s) or in general education and earned from a college or university that is regionally accredited or recognized by the U.S. Dep't of Education.
 - ...
 - c. All bargaining unit employees will receive pay lane adjustments as follows:
 - (1) Pay lane adjustments will be made upon receipt by the Agency of an official copy of a transcript indicating course work completion or award of an advanced degree (in an employee's certified field(s) or in general education), in the employee's certified field(s), or in general education and earned from a college or university that is regionally accredited or recognized by the U.S. Dept. of Education. If the college or university does not identify the date course work was completed, bargaining unit employees may provide official grade reports or other appropriate official documentation from the college or university in conjunction with the transcript to establish the date on which course hours were completed.
 - (2) Pay lane adjustments based upon completion of "degree plus hours" (e.g., BA+15) means graduate semester hours completed after the award of an academic degree. Quarter hours will be converted to semester hours on a 5 to 3 basis (i.e., 5 quarter hours equals 3 semester hours). In determining pay lane adjustments based upon completion of "degree plus hours," the graduate credits acquired must be in an employee's certified field(s) and/or general education.

- (3) Pay lane changes will be retroactive for pay purposes to the beginning of the pay period following award of the degree of completion of coursework as described in c.(1) above, provided the employee submits the request for pay lane change within one hundred and twenty (120) days of award of the degree or completion of the coursework. If the employee does not submit the request for pay lane change and supporting transcript(s) within this time period, the pay lane change shall be effective at the beginning of the pay period following submission.

C. Article 20, Section 3, Union Proposal

- a. Prior experience for pay setting purposes will be accorded for the life of the [CBA] as reflected on the matrix at Appendix E.
- b. Pay setting for bargaining unit members hired after the effective date of this agreement will be in accordance with the following:
 - (1) Employees will be placed in the pay lane commensurate with degree, or degree plus semester hours (or equivalent quarter hours), in the employee's certified field(s), semester hours that could lead to additional [Agency] teaching categories, or general education and earned from a college or university that is regionally accredited or recognized by the U.S. Dep't. of Education.
- c. All bargaining unit employees will receive pay lane adjustments as follows:
 - (1) Pay lane adjustments will be made upon receipt by the Agency of an official copy of a transcript indicating course work completion or award of an advanced degree (in an employee's certified category, that could be used toward obtaining certification in a new category, or in general education), in the employee's certified field(s), earned from a college or university that is regionally accredited or recognized by the U.S. Dept. of Education. If the college or university does not identify the date course work was completed, bargaining unit employees may provide official grade reports or other appropriate official documentation from the college or university in conjunction with the transcript to establish the date on which course hours were completed.
 - (2) Pay lane adjustments based upon completion of "degree plus hours" means graduate semester hours completed

after the award of an academic degree. Quarter hours will be converted to semester hours on a 5 to 3 basis. In determining pay lane adjustments based upon completion of "degree plus hours," the semester credits acquired must be in an employee's certified(s) [Agency] teaching category, semester hours that could lead to additional [Agency] teaching categories, and/or general education.

- (3) Pay lane changes will be retroactive for pay purposes to the beginning of the pay period following award of the degree of completion of coursework as described in c.(1) above, provided the employee submits the request for pay lane change within one hundred and twenty (120) days of award of the degree or completion of the coursework. If the employee does not submit the request for pay lane change and supporting transcript(s) within this time period, the pay lane change shall be effective at the beginning of the pay period following submission.

Teachers are paid in accordance with a pay matrix that is based upon years of experience and educational level. The pay matrix establishes 8 different "Academic Salary Lanes" (pay lanes) that each have 29 pay steps. Under the matrix, a teacher may be eligible for a pay increase if they complete continuing education that meets certain criteria. As part of negotiations over the parties' successor CBA, the Agency proposed that creditable hours must be earned at "the graduate level." Currently, teachers may rely upon any college hours. Despite some earlier disagreement, the Union now agrees to Management's suggested change.

Notwithstanding the foregoing agreement, two aspects of this topic remain in dispute: (1) which educational field must be the source of graduate credits (Article 20, Section 3(b)(1)); and (2) pay lane adjustments after the date of a teacher's hire (Article 20, Section 3 (c)(1)-(2)).

i. Article 20, Section 3(b)(1), Educational Fields

Agency Position

The Agency proposes that graduate hours be limited to course work related to a teacher's current teaching position. Management does not believe it would be efficient to compensate employees for course credits that are unrelated to a current course and that could never be used in the future. The Union's proposal, for example, could allow a pay increase after 15 credit hours in an unrelated field even if the teacher chooses not to complete the degree/further courses. Thus, it is the view of the Agency that compensable graduate work should have defined parameters.

Union Position

The Union proposes that compensation may be earned for “semester hours that *could lead to additional [Agency] teaching categories.*” (emphasis added). The Union supports the notion that course work should be relevant to furthering the Agency’s mission. The Union believes its proposal better incentivizes an employee to pursue educational opportunities that would be relevant to promoting the Agency’s mission.

Conclusion

The Panel orders adoption of Management’s proposal. The Agency’s proposal is premised on the idea that teachers should focus on educational categories that support their current position. By contrast, the Union wishes to leave open the possibility that a teacher may pursue course work that *could* support the mission of the Agency in the future. However, under the Union’s approach, it is not a guarantee that the matriculated course would actually end up being utilized. Thus, the Panel believes that Management’s proposal provides a better balance of supporting the mission of the Agency and rewarding employees for work that furthers the foregoing.

ii. Article 20, Section 3 (c)(1)-(2), Timing of Pay Lane Adjustments

Agency Position

This topic addresses when a teacher is eligible to receive a pay lane adjustment. The Agency rejects the Union’s attempt to once again permit compensation for credits that “could lead” to future teaching opportunities for the same reasons that are discussed above. In addition, in Section 3(c)(2), the Agency proposed language stating that pay lane increases will be based upon completion of “degree plus hours (e.g., BA+15).” This language would mean that graduate hours would count *only* for hours that are completed *after* an academic degree, such as a Bachelor of Arts, has been awarded. By focusing on this category of hours, Management believes that students will benefit because they will be exposed to teachers who have received recent and relevant educational experience.

Union Position

The Union once again requests pay lane adjustments for graduate hours that “could” lead to future teaching opportunities. The Union further opposes the Agency’s requirement that hours must arise after the completion of an academic degree. Thus, it proposes dropping the “(e.g., BA+15)” language discussed above. In the Union’s view, relevant credits are relevant no matter when they are earned. The Agency attempted to unilaterally impose a similar requirement under the parties’ existing CBA, and the parties are currently litigating that imposition. The Agency’s proposal is nothing more than an extension of that prior action. To date, the Union believes it has not received any convincing explanation in support of the Agency’s approach.

Conclusion

For the reasons discussed in Section 3(b)(i), the Panel rejects the Union's proposed language concerning earning credit for courses that "could" lead to future opportunities. For similar reasons, the Panel adopts Management's proposal on the topic of when credits should be earned. The Union's proposal creates a scenario in which teachers could receive compensation for hours that are not tethered to a degree that is a focus of a teacher's course work. The Agency's proposal, by contrast, emphasizes absorbing course work relevant to the duties at hand. Thus, the Panel believes it is more relevant to the goals of the Agency.

4. Article 20, Section 4, "Academic Salary Lanes"

A. Management Proposal

For purposes of [Article 20], the academic salary lanes reflect completion and award of the following degrees and/or degree plus hours:

- BA – Bachelor's Degree
- BA+15 – Bachelor's Degree + 15 graduate semester hours
- BA+30 – Bachelor's Degree + 30 graduate semester hours
- MA – Master's Degree
- MA+15 – Master's Degree + 15 graduate semester hours
- MA+30 – Master's Degree + 30 graduate semester hours
- EDS –Educational Specialist Degree
- DOC – Formal Doctorial (PHD) or Doctor of Education (EdD)

This Section will apply prospectively to bargaining unit members following the effective date of this Agreement.

B. Article 20, Section 4, "Academic Salary Lanes"

The Union offered no counter proposal. To the contrary, in its Post-Hearing brief, the Union stated that it "accepts the [A]gency's proposed Article 20, Section 4."

C. Parties' Positions and Conclusion

As noted above, the Union is willing to agree to Management's language. Accordingly, the Panel will order adoption of the Agency's proposal.

5. Article 22, Section 3(e), "Reassignments to Different School or Classroom"

A. Management Proposal

Management has determined that employees who are reassigned to a different school or classroom location shall receive:

- (1) Packing materials and assistance with packing, moving, and unpacking;
- (2) Access to the school building if needed;
- (3) Up to one and one-half (1-1/2) weekdays of release time from assigned duties to accomplish the move. Additional release time may be granted at the discretion of the supervisor, if requested. If Management determines that the employees do not require the full one and one-half (1-1/2) workdays to accomplish the move, the employee will return to this/her normal duties or, if the move was accomplished during a recess period or outside the duty day, the employee's workday will conclude; and
- (4) In the event the employee is directed to complete the move outside the duty day, the employee will be paid at his/her earned hourly rate.
- (5) The Agency will specify, in writing, the period of time the employee will be released from work to accomplish the reassignment.

B. Union Proposal

Employees are reassigned to a different school or classroom location shall receive:

- (1) Packing materials and assistance with packing, moving, and unpacking;
- (2) Access to the school building if needed;
- (3) One and one-half (1-1/2) weekdays of release time from assigned duties to accomplish the move. Additional release time may be granted at the discretion of the supervisor, if requested; and
- (4) In the event the employee is directed to complete the move outside the duty day, the employee will be paid at his/her earned hourly rate.

- (5) The Agency will specify, in writing, the period of time the employee will be released from work to accomplish the reassignment.

C. Management Position

The above proposals address how much time teachers may have when they relocate to new schools or classrooms. The parties' proposals differ in two key ways. First, in Section 3.e.3 above, Management proposes that teachers will receive "up to" 1-1/2 work days to relocate to the aforementioned areas. This amount of time would act as a ceiling and not a guarantee. Second, in Section 3.e.3, Management also proposes that the Agency will retain discretion to require teachers to return to their "normal duties" should they conclude a move in under 1-1/2 work days.

For the above category of relocations, the current practice is to guarantee 1-1/2 full days to teachers. Management believes a change is necessary in order to properly balance the needs of the Agency with employee time necessary for relocations. As to the latter category, the Agency maintains that a one size fits all solution is unnecessary because different teachers may need different amount of times to effectuate a move. Further, the Agency is concerned because time spent away from performing teaching duties means that the Agency has to acquire the services of a substitute teacher. The Agency's proposal allows principals at individual schools the flexibility to assess how much time is truly necessary; indeed, the proposal would even permit granting *more* time.

D. Union Position

Unlike Management's proposal, the Union proposes that employees receive 1-1/2 days, without qualifying language. The Union's proposal also omits Management's language requiring a return to duty after the period ends. The Union maintains that the current practice has been in place for over 30 years and Management has failed to cite a single instance in which an employee's use of 1-1/2 days was ever found to be excessive. Indeed, even after using this full allotment of time, teachers often spend additional uncompensated time because 1-1/2 days is insufficient. The Union, however, is willing to meet the Agency's concerns by adding modifications to its proposals. For example, it would be willing to include language stating that employees would "normally" receive 1-1/2 work days to relocate or that employees would report completions of moves to their supervisors.

E. Conclusion

The Panel will order a modified Agency proposal. The parties' arguments in support of their respective positions are long on rhetoric but short on supporting data. As the Union points out, the Agency has not provided a single instance in which the existing practice created hardships for any school. Relatedly, however, the Union failed to provide concrete examples involving the necessity of a guarantee of 1-1/2 days.

Nevertheless, there is logic to the Agency's idea that local principals should have some degree of flexibility when assessing the needs of their respective work forces. Accordingly, the Panel accepts the Agency's proposal but modifies its language to substitute "up to" with "normally." Thus, the expectation is that employees would "normally" receive a certain amount of time; however, the qualifying language gives Management flexibility to make changes as necessary. Moreover, the modified language requires employees to notify Management about the completion of duties so that Management can make the best decisions on how to utilize its resources. The modified language is in bold below:

Employees who are reassigned to a different school or classroom location shall receive:

- (1) Packing materials and assistance with packing, moving, and unpacking;
- (2) Access to the school building if needed;
- (3) **Normally**, one and one-half (1-1/2) weekdays of release time from assigned duties to accomplish the move. Additional release time may be granted at the discretion of the supervisor, if requested. If Management determines that the employees does not require the full one and one-half (1-1/2) workdays to accomplish the move, the employee will return to this/her normal duties or, if the move was accomplished during a recess period or outside the duty day, the employee's workday will conclude ; and
- (4) In the event the employee is directed to complete the move outside the duty day, the employee will be paid at his/her earned hourly rate.
- (5) The Agency will specify, in writing, the period of time the employee will be released from work to accomplish the reassignment. **Upon completion of the reassignment or move, the employee shall notify their supervisor.**

6. Article 22, Section 3(f), Reassignments to Different Grades or Subject Areas

A. Management Proposal

Management has determined that employees who are reassigned to a different grade (elementary grades) or new subject area shall receive:

- (1) Packing materials and assistance with packing, moving, and unpacking;

- (2) Access to the school building if needed;
- (3) Up to one and one-half (1-1/2) workdays of release time from assigned duties to accomplish the change. Additional release time may be granted at the discretion of the supervisor, if requested. If Management determines that the employee does not require the full one and one-half (1-1/2) workdays to accomplish the move, the employee will return to this/her normal duties or, if the move was accomplished during a recess period or outside the duty day, the employee's workday will conclude;
- (4) The opportunity to observe other classes in the area of reassignment as designated by the supervisor;
- (5) In the event the employee is directed to complete the move outside the duty day, the employee will be paid at his/her earned hourly rate; and
- (6) The Agency will specify, in writing, the period of time the employee will be released from work to accomplish the reassignment.

B. Union Proposal

Employees who are reassigned to a different grade (elementary grades) or new subject area shall receive:

- (1) Packing materials and assistance with packing, moving, and unpacking;
- (2) Access to the school building if needed;
- (3) One and one-half (1-1/2) workdays of release time from assigned duties to accomplish the change. Additional release time may be granted at the discretion of the supervisor, if requested; and
- (4) The opportunity to observe other classes in the area of reassignment as designated by the supervisor;
- (5) In the event the employee is directed to complete the move outside the duty day, the employee will be paid at his/her earned hourly rate; and
- (6) The Agency will specify, in writing, the period of time the employee will be released from work to accomplish the reassignment.

C. Management Position

These proposals are similar to the ones discussed in Section 5 above. However, these proposals address duty time spent on reassignments to different grades rather than different classrooms. Regardless of the distinction, the Agency raises the same arguments discussed in Section 5 to support its proposals on classroom reassignments. That is, the Agency is willing to offer only "up to" 1-1/2 days of duty time and place other limitations on use of this time.

D. Union Position

As with Section 5, the Union proposes a guarantee of 1-1/2 days of duty time for reassignments concerning different grades or new subject areas. The Union argues that a reassignment to a new classroom is a complete change to an educator's job. As such, an educator would have to spend time "familiarizing herself with a new curriculum, unpacking materials, changing the subject of her bulletin boards, and observing and consulting with educators." In other words, a teacher can never be too prepared.

E. Conclusion

The Panel adopts an Agency modified proposal to resolve this dispute. The areas of disagreement in this topic are nearly identical to those discussed in Section 5 above. Accordingly, the Panel believes it is appropriate to adopt the modified language discussed above to resolve the dispute here as well:

Employees who are reassigned to a different grade (elementary grades) or new subject area shall receive:

- (1) Packing materials and assistance with packing, moving, and unpacking;
- (2) Access to the school building if needed;
- (3) **Normally, one and one-half (1-1/2) workdays of release time from assigned duties to accomplish the change. Additional release time may be granted at the discretion of the supervisor, if requested. If Management determines that the employees does not require the full one and one-half (1-1/2) workdays to accomplish the move, the employee will return to this/her normal duties or, if the move was accomplished during a recess period or outside the duty day, the employee's workday will conclude; and**
- (4) The opportunity to observe other classes in the area of reassignment as designated by the supervisor;

- (5) In the event the employee is directed to complete the move outside the duty day, the employee will be paid at his/her earned hourly rate; and
- (6) The Agency will specify, in writing, the period of time the employee will be released from work to accomplish the reassignment. **Upon completion of the reassignment or move, the employee shall notify their supervisor.**

7. Article 22, Section 3(g), Reassignments to Different School and Different Grade or Subject Area Reassignments

A. Management Proposal

Management has determined that employees who are simultaneously reassigned to a different school or classroom and to a different grade (elementary grades) or new subject area shall receive:

- (1) Packing materials and assistance with packing, moving, and unpacking;
- (2) Access to the school building if needed;
- (3) Up three (3) workdays of release time from assigned duties to accomplish the move and change. If the employee does not require the full three (3) workdays to accomplish move/change, the employee is expected to return to normal duties or, if accomplishing the change during a recess period, the employee's workday will conclude. Additional release time may be granted at the discretion of the supervisor, if requested. If Management determines that the employee does not require the full 3 workdays to accomplish the move, the employee will return to his/her normal duties or, if the move was accomplished during a recess period or outside the duty day, the employee's workday will conclude;
- (4) The opportunity to observe other classes in the area of reassignment as designated by the supervisor;
- (5) In the event the employee is directed to complete the move outside the duty day, the employee will be paid at his/her earned hourly rate; and
- (6) The Agency will specify, in writing, the period of time the employee will be released from work to accomplish the reassignment.

B. Union Proposal

The Union offered no counter proposal.

C. Management Argument

The Agency believes that its proposal enshrines existing practice for situations where an educator is simultaneously reassigned to a different school or classroom *and* to a different grade or new subject area. This enshrinement will help deter future disputes as the Union conceded this is the existing practice during the Informal Conference. As opposed to Sections 5 and 6 discussed above, the Agency offers “up to” 3 days of duty time.

D. Union Argument

The Union argues that Management’s proposal is unnecessary. Other portions of Article 22, Section 3 address the procedures to be followed during reassignments. Thus, the Agency’s suggested language does nothing but muddy the waters. It also objects to the “up to” language as needlessly restrictive.

E. Conclusion

The Panel adopts a modified version of the Agency’s proposal. The Union’s argument in opposition to Management’s proposal is that it is superfluous because other portions of the CBA address reassignments for different matters, e.g., new schools, new grades. However, the Agency’s proposal focuses on situations where several of these reassignments occur *simultaneously*. Thus, the Panel believes the language identifies a unique scenario that is worth addressing.

The Agency’s proposal addresses many of the same issues discussed in Sections 5 and 6, such as whether to grant employees “up to” a certain amount of time or to unequivocally grant that time. As with the two aforementioned sections, the Panel will impose language that grants Management flexibility but also establishes a qualified expectation for employees:

Employees who are simultaneously reassigned to a different school or classroom and to a different grade (elementary grades) or new subject area shall receive:

- (1) Packing materials and assistance with packing, moving, and unpacking;
- (2) Access to the school building if needed;
- (3) **Normally**, three (3) workdays of release time from assigned duties to accomplish the move and change. If the employee does not require the full three (3) workdays to accomplish move/change, the

employee is expected to return to normal duties or, if accomplishing the change during a recess period, the employee's workday will conclude. Additional release time may be granted at the discretion of the supervisor, if requested. If Management determines that the employee does not require the full 3 workdays to accomplish the move, the employee will return to his/her normal duties or, if the move was accomplished during a recess period or outside the duty day, the employee's workday will conclude;

- (4) The opportunity to observe other classes in the area of reassignment as designated by the supervisor;
- (5) In the event the employee is directed to complete the move outside the duty day, the employee will be paid at his/her earned hourly rate; and
- (6) The Agency will specify, in writing, the period of time the employee will be released from work to accomplish the reassignment. **Upon completion of the reassignment or move, the employee shall notify their supervisor**

8. Article 22, Section 3(h), "Subject Area Definition"

A. Management Proposal

A new subject area is defined as a teaching assignment in a different academic discipline, e.g., Language Arts to Social Studies or Math to Science. However, a teaching assignment to a course within an academic discipline is not a "new subject area" e.g., assigning a teacher from Algebra 1 to Geometry or Physical Science teacher to Biology.

B. Article 22, Section 3(h), "Subject Area"

A new subject area is defined as a teaching assignment with a new curriculum.

C. Management Position

This topic concerns whether teachers will receive preparation time when they begin teaching new courses. The Agency's language covers a topic that is not addressed in the parties' current CBA, i.e., how to define the phrase "subject area." Teachers receive preparation and observation time when moving to a new subject area; however, the ambiguity of this phrase has led to several grievances. Thus, Management has crafted a proposal for this phrase that focuses on teachers moving from one academic discipline to another. So, for example, when a teacher moves from teaching math to science, they would be considered to have transitioned to a new

“subject area.” However, moving from Algebra to Geometry would not be considered such a move. The latter scenario, according to Management, involves a situation where an employee already has the “same background, training, and similar experience.” Thus, it does not follow that they would need additional time to prepare or observe.

D. Union Position

Unlike Management, the Union offers a broader definition that focuses on when teachers simply receive a “new curriculum.” A change in curriculum requires “new materials, new lesson plans, a new level of students, new technology and equipment, new bulletin boards and posted materials in the classroom, and potentially new required trainings.” Thus, contrary to the Agency’s claims, teachers will indeed face new challenges if they change to a new class, regardless of the academic discipline involved. Moreover, the Agency’s proposal offers “little clarity” because it is not always clear when a course could be considered a new subject of study. The Union’s proposal, by contrast, “offers a clearer and more equitable definition.”

E. Conclusion

The Panel orders adoption of the Union’s proposal. The Agency’s primary proffered rationale is that its proposal is meant to stave off potential litigation. However, it is entirely possible that litigation could still arise if the parties disagree over whether a new course truly constitutes a different academic discipline. By contrast, the Union’s proposal encompasses a broader category, i.e., simply transitioning to a new curriculum. If the Agency’s primary concern is avoiding litigation, it is the Panel’s opinion that the Union’s broader language best satisfies that goal. Thus, the Panel believes it to be the appropriate solution to resolve this dispute.

9. Article 22, Section 3(i), “Simultaneous Reassignments”

A. Management Proposal

Management has determined that no more than a total of three (3) workdays will be allowed per employee for any combination of contemporaneous reassignments to a different school or classroom and to different grades (elementary grades), and new subject areas under this section.

B. Union Proposal

The Union offers no counter proposal.

C. Parties Positions and Conclusion

The Agency claims its proposal captures existing practice for the total amount of work time devoted to various combinations of moves, and it is necessary to avoid future

disputes. The Union did not address Management's proposal in its post hearing brief or provide a counter proposal. Given the lack of Union response, the Panel adopts Management's proposal with modification. The one addition the Panel will add is language from Sections 6-7 above that would grant Management sole discretion to grant additional release time. The Panel imposes this language for purposes of consistency. Due to this addition, the Panel also adds language into the first sentence stating that there would "normally" be no more than 3 days granted. In other words, the language would read "Management has determined that normally no more than a total of three (3) workdays will be allowed per employee." This addition will ensure consistency with the last sentence that would grant Management discretion to grant more than 3 days. Thus, the modified language is as follows:

Management has determined that **normally** no more than a total of three (3) workdays will be allowed per employee for any combination of contemporaneous reassignments to a different school or classroom and to different grades (elementary grades), and new subject areas under this section. **Additional release time may be granted at the discretion of the supervisor, if requested.**

10. Article 22, Section 4, "School Moves"

A. Management Proposal

- (a) Management has determined that in the event that the Agency elects to relocate all the employees and contents of an entire school, each bargaining unit employee making such move shall receive:
- (1) Packing materials and assistance with packing, moving, and unpacking;
 - (2) Access to the school building if needed;
 - (3) Up to one and one-half (1-1/2) workdays of release time from assigned duties for packing his/her classroom.
 - (4) Up to two (2) workdays of release time from assigned duties to unpack and/or setup his/her classroom. Additional release time may be granted at the discretion of the supervisor, if requested;
 - (5) If Management determines that the employee does not require the full one and one-half (1-1/2) workdays to accomplish the packing or the full two (2) workdays to unpack/setup his/her classroom, the employee will return to his/her normal duties or, if the move was accomplished during a recess period or outside the duty day, the employee's workday will conclude.

- (b) In the event the employee is directed to complete the move outside the duty day/year, the employee will be paid at his/her earned hourly rate;
- (c) Bargaining unit members completing the packing/unpacking of personal teaching supplies, schools supplies and equipment before the allotted time will report their completion to the principal or designee;
- (d) The Agency will specify, in writing, the period of time the employees will be released from work to accomplish the reassignment.

B. Union Proposal

The parties agree to continue to follow the MOU "Re: School Moves" dated May 12, 2017.

C. Management Position

This proposal is intended to address those situations where the Agency "elects to relocate all the employees and contents of an entire school." As with the proposals concerning various types of reassignments, the major area of disagreement is how much time will be allotted for the type of move involved. The Agency's proposal references three categories of time:

- Up to 1-1/2 workdays for a teacher to pack his or her classroom;
- Up to 2 workdays to unpack/set up a new classroom; and
- Permitting Management to require employees to return to normal duties if they finish their time early.

The Agency believes that the above guidelines will provide it with authority and flexibility in making work assignments, which would also include picking employees from outside of the bargaining unit to assist with moves. This flexibility will also assist the Agency in the event that external delays, such as construction problems or weather, impede moves. That flexibility will also ensure that students receive quality education.

Management rejects the Union's reliance on the 2017 MOU referenced above. The MOU is too restrictive on Management's ability to direct tasks and assignments because it guarantees set amounts of time to teachers. Moreover, that MOU arose out of unique circumstances because the Agency was looking to wrap up certain school moves by the end of 2017. This MOU also has a clear sunset provision stating it will expire upon the implementation of a new CBA. According to the Agency, this provision establishes that the parties intended for it to end rather than carry over into a new agreement. Finally, the MOU requires the Agency to contract out the moving of all textbooks and Agency purchased materials. Such a requirement, the Agency argues,

places a burden on the Agency by obligating it to expend funds on non-unit employees who would handle the foregoing tasks.

D. Union Position

The Union believes the 2017 MOU on school moves is sufficient to address the topic covered by the Agency's proposals. Unlike the Agency's proposal, the MOU offers the following:

- 2 days for packing and relocating and 2 days for unpacking/setting up a new classroom for moves that occur at the beginning of the 2017-18 school year;
- 1-1/2 days for packing and 2 days for unpacking for those moves that occurred after the start of the foregoing year; and
- Agreement that an employee "may" be required to perform other tasks if they complete their move early.

The Union argues that the MOU has served as a model of consistency ever since its enactment and that the Agency has failed to cite a single instance in which it created any problems for a single school. The Agency proposed the "up to" language during negotiations over the MOU, but the parties compromised by accepting language stating that employees could be required to return to other days upon early completion of a move. There is no reason this language should now be disregarded.

E. Conclusion

Consistent with its modifications on the other proposals involving reassignments, the Panel adopts a modified version of the Agency's proposal by modifying Section 3(a) in the manner described below. The key area of disagreement is once again whether duty time for a reassignment/relocation should be considered automatic for employees. Although the Agency speaks to problems concerning work place needs, as the Union mentions, the Agency never produced evidence of actual problems arising since the enactment of the 2017 MOU. However, it is axiomatic that Management should have some degree of flexibility in fulfilling its workplace mission. Accordingly, the Panel will impose the "normally" qualifying language that was discussed in Sections 5-7 above. We will, however, keep intact Management's language requiring employees to return to duty if Management decides additional time is unnecessary. Thus, the Agency's language will be modified as follows:

- (a) In the event that the Agency elects to relocate all the employees and contents of an entire school, each bargaining unit employee making such move shall **normally** receive:
 - (1) Packing materials and assistance with packing, moving, and unpacking;

- (2) Access to the school building if needed;
- (3) One and one-half (1-1/2) workdays of release time from assigned duties for packing his/her classroom.
- (4) Two (2) workdays of release time from assigned duties to unpack and/or setup his/her classroom. Additional release time may be granted at the discretion of the supervisor, if requested;
- (5) If Management determines that the employee does not require the full one and one-half (1-1/2) workdays to accomplish the packing or the full two (2) workdays to unpack/set up his/her classroom, the employee will return to his/her normal duties or, if the move was accomplished during a recess period or outside the duty day, the employee's workday will conclude.

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:

Article 18, Section 1(e) - The Panel orders the parties to adopt the Agency's proposal.

Article 18, Section 3(f) – The Panel orders the parties to adopt the Agency's proposal.

Article 20, Section 3 – The Panel orders the parties to adopt the Agency's proposal.

Article 20, Section 4 – The Panel orders the parties to adopt the Agency's proposal.

Article 22, Section 3(e) – The Panel orders the parties to adopt a modified version of the Agency's proposal.

Article 22, Section 3(f) – The Panel orders the parties to adopt a modified version of the Agency's proposal.

Article 22, Section 3(g) – The Panel orders the parties to adopt a modified version of the Agency's proposal.

Article 22, Section 3(h) – The Panel orders the parties to adopt the Union's proposal.

Article 22, Section 3(i) – The Panel orders the parties to adopt a modified version of the Agency's proposal.

Article 22, Section 4 – The Panel orders the parties to adopt a modified version of the Agency's proposal.

By direction of the Panel.



Mark A. Carter
FSIP Chairman

December 14, 2018
Washington, D.C.

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