

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

U.S. DEPARTMENT OF DEFENSE,  
DEPARTMENT OF THE ARMY,  
CORPUS CHRISTI ARMY DEPOT, TX

And

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, AFL-CIO,  
CORPUS CHRISTI ARMY DEPOT, LODGE 2049

Case No. 20 FSIP 029

**DECISION AND ORDER**

**BACKGROUND**

This case, filed by the U.S. Department of Defense, Department of the Army, Corpus Christi Army Depot, TX (Agency or Management) on February 4, 2020, under 5 U.S.C. §7119 of the Federal Service Labor-Management Relations Statute (the Statute) concerns 5 articles in the parties' successor collective bargaining agreement (CBA). The mission of the Agency is to ensure aviation readiness for all service and international sales programs. The Agency is currently the largest facility of its type in the world and serves as a depot training base for active duty Army, National Guard, Reserve and international personnel. The depot's field teams provide worldwide onsite maintenance services for units around the world, saving a considerable amount of time and money by repairing aircraft engines and components on site rather than having them transported to and from the depot for repair. The International Association of Machinists and Aerospace Workers, AFL-CIO, Corpus Christi Army Depot, Lodge 2049 (Union) represents approximately 217 wage-grade non-professional employees who encumber various blue-collar positions. The parties are governed by a CBA that expired on June 6, 2019, but is in a year-to-year rollover status.

## **BARGAINING HISTORY**

The parties reached a tentative agreement in August 2019 on a successor CBA. However, the bargaining-unit failed to ratify the agreement. Consequently, the Agency filed a request for assistance with the Panel in October 2019 in 20 FSIP 005. The Panel helped the parties enter into a settlement agreement (the settlement agreement) that called for the parties to resume negotiations. As relevant, the settlement agreement permitted the Union to reopen any previously-tentatively-agreed-to language that failed ratification. It also permitted the Agency to reopen any tentatively-agreed-to article it "wishe[d]" to reopen. The Agency subsequently withdrew its request for assistance in December 2019.

Armed with the foregoing, the parties resumed negotiations. In January 2020 through February 2020, the parties had 9 bargaining sessions with the assistance of the Federal Mediation and Conciliation Services (FMCS). They made some progress, but could not reach agreement. Accordingly, on February 3, 2020, the FMCS released the parties from mediation in Case No. 20191000056.

The Agency filed another request for assistance on February 4, 2020, concerning six articles. Citing a dispute over the application of the settlement agreement, the Panel asserted jurisdiction over only five of those articles and ordered the parties to resolve this dispute through a Written Submissions procedure with an opportunity for rebuttal statements. Initial arguments were due April 17<sup>th</sup>, and rebuttal statements were due April 29<sup>th</sup>. In taking jurisdiction over those articles, the Panel rejected a Union argument that the Panel should decline jurisdiction because of a number of Union-filed unfair labor practice (ULP) charges.

## **PRELIMINARY ISSUE**

The Agency requests that the Panel strike/decline to consider the Union's arguments that it submitted in support of its positions. To understand why, the following dates and actions are important:

- On February 14, 2020, while this matter was still under investigation, the Union submitted to the Panel and the Agency a "matrix" that contained both parties' proposals and the Union's summary of the parties' respective arguments for adoptions. And, as noted

previously, the Union challenged the Panel's jurisdiction.

- On April 3, 2020, the Panel asserted jurisdiction over five articles.
- On April 17, 2020, the due date for the parties' initial submissions, the Agency submitted its initial argument. The Union did not submit anything.
- On April 20, the Union informed the Staff and the Agency that it was relying upon the matrix document. The Union also renewed its objection to Panel jurisdiction due to the aforementioned pending ULP's. It did not acknowledge the Panel's April 17<sup>th</sup> deadline.
- On April 29, the Agency submitted its rebuttal statement, and the Union provided nothing.

In the Agency's rebuttal statement, it objects to the Union's April 20<sup>th</sup> submission as untimely. Per the Panel's scheduling order, Management notes that all initial statements were due April 17<sup>th</sup>. In addition to the Union's failure to comply with this deadline, Management complains that the Union's approach provided it with 3 additional calendar days to work on an initial submission. The Union received an unfair advantage and, as such, the Agency argues that the Panel should decline to consider the Union's matrix document and its renewed jurisdictional challenge. The Union did not respond to the Agency's objection.

Even assuming that the Union's renewed jurisdictional argument was appropriately before the Panel, the argument presents no new information that gives the Panel reason to revisit its jurisdictional conclusion. As such, the Union's jurisdictional argument is rejected once more.

Regarding the Union's matrix, as noted above, that document became a part of this record when the Union provided it to all involved parties on February 14<sup>th</sup>. Thus, there is nothing inappropriate about the Panel relying upon it now. The Panel, then, will consider the Union's matrix and the arguments contained therein as part of its deliberations.

## **ISSUES**

### **I. Article 8, "Bulletin Board and Information"**

### A. Agency Position

The Union currently uses a bulletin board on the Agency's property. The Agency proposes the following language to replace existing CBA language:

Employer will post the photograph and title of the Union President and Vice President as provided by the Union in one bulletin board. This information may be updated at the request of the Union. Agency will post all materials in accordance with all applicable regulations.<sup>1</sup>

The existing contract grants the Union use of bulletin board space at no cost to the Union.<sup>2</sup> This language should change, in large part, because the Union rarely updates its bulletin board space. To wit, although the current Union President has held his position since September 1, 2018, the bulletin board *still* identifies the former Union President as the current President. The only other piece of information on the board is information concerning contract ratification that has been on display for 8 months. Management repeatedly requested throughout negotiations that the Union update its bulletin board, but the Union did not do so. The foregoing shows that the Union does not utilize this space efficiently and, as such, the Union does not truly need it.

Additionally, the Agency notes that Executive Order 13,387, "Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use" (Official Time Order) Section 4.iii<sup>3</sup>, prohibits the Union's use of Agency property for

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<sup>1</sup> Agency Initial Submission at 1. When it filed its request for assistance, and during bargaining, the Agency initially proposed striking bulletin board language altogether but permitting the Union to submit information for posting purposes. However, the Agency would first "consider" the information before approving its posting. Management has moved away from this language.

<sup>2</sup> See *id.* at 2 (quoting existing CBA language).

<sup>3</sup> "No employee, when acting on behalf of a Federal labor organization, may be permitted the free or discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations." Executive Order 13,387, Section 4.iii.

representational purposes unless such use is offered to other non-Federal entities. The Agency believes that use of bulletin boards falls within the coverage of this language.<sup>4</sup> During negotiations, the only rental arrangement that the Union suggested was \$1. The Agency did not believe this offer to be a reasonable one. And, Management contends that "reclaiming" its bulletin board will be more consistent with the intent of the Official Time Order's admonishment that government operations should be run in an effective and efficient manner.<sup>5</sup>

### **B. Union Position**

The Union wishes to carry forward the existing CBA language. However, it would be willing pay a "reasonable annual rate" to continue using the board.

### **C. Conclusion**

The Panel adopts Management's proposal. The Agency provided ample and uncontroverted evidence that the Union's use of the bulletin board is limited at best. As demonstrated by the photographs the Agency submitted to the Panel,<sup>6</sup> there is minimal information contained on those boards. And, the Union does not dispute the Agency's claim that the Union has not updated *any* information on the board for nearly 1 year. Given this posture, it is difficult to understand why the Union believes it must continue to have regular access to a board regardless of its willingness to pay an undefined rental fee. Accordingly, it is most appropriate to accept the Agency's proposal to resolve this issue.

## **II. Article 17, "Grievance Procedure"**

### **A. Agency Position**

The Agency proposes excluding grievances over: (1) challenges to performance ratings; and (2) removals. It believes this position is required under Executive Order 13,389, "Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles" (Removal Order) and

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<sup>4</sup> See Agency Initial Submission at 3.

<sup>5</sup> See Agency Rebuttal at 4.

<sup>6</sup> See Agency Initial Submission at 4-6.

related Office of Personnel Management guidance. Additionally, the existing grievance/arbitration process has created an environment of unreasonable delays. Of four pending scheduled arbitrations, three were scheduled and/or rescheduled -- per the Union's requests -- up to *just shy of two years* after the initial arbitration request.<sup>7</sup> In the Agency's view, the Union is relying upon the grievance procedure to abuse the parties' bargaining relationship.

Management is also opposed to Union language on the pay provision discussed below. The parties' CBA already addresses that topic. The Union's language is, therefore, unnecessary.

### **B. Union Position**

The Union opposes the Agency's proposed exclusions. It argues that the proposal concerning removals is inconsistent with the Statute and Title 5 of the United States Code (the Union did not offer any specific citations, however). The Agency's proposed exclusion on performance ratings, the Union contends, should be rejected because Army regulations tie ratings to pay, awards, and reduction-in-force standings.

Additionally, the Union also proposes striking existing language in the grievance procedure that prohibits grievances involving environmental differential pay (EDP).<sup>8</sup> The Union believes that grievances involving pay issues are legal, and the Agency's insistence on continuing this language is contrary to that principle.

### **C. Recommendation**

The Panel imposes a modified version of the Agency's proposal. The Agency's proposals arise due to the Removal Order. Sections 3 and 4 of the Order calls for three different matters to be excluded from the scope of a negotiated grievance procedure, and the Panel has offered guidance on how it views these exclusions.

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<sup>7</sup> See Agency Rebuttal at 5-6.

<sup>8</sup> EDP is a type of hazard pay that may be available to certain categories of Federal employees if they met criteria established by statute -- 5 U.S.C. 5343(c)(4) -- and Office of Personnel Management regulations.

To begin with, the Panel has recognized the significance of Federal court precedent concerning grievance exclusions. The Panel has acknowledged the United States Court of Appeals for the District of Columbia's conclusion that a proponent of grievance exclusion must "establish convincingly" in a "particular setting" that this position is the "more reasonable one."<sup>9</sup> The Panel has further clarified that the Removal Order - and related Executive Orders - demonstrates important public policy that must be taken into consideration when resolving these disputes. That consideration, however, differs depending upon the exclusion that is involved. With that framework in my mind, the Panel turns to addressing each of the three proposed exclusions.

i. Performance Appraisals

The Agency wishes to exclude challenges to "performance appraisals," and cites the Removal Order in support. Section 4(a)(i) of the Order calls upon agencies to exclude challenges to "ratings of records" from a negotiated grievance procedure in order to "promote good morale in the Federal workforce, employee accountability, and high performance, and to ensure the effective and efficient accomplishment of agency missions and the efficiency of the Federal service."<sup>10</sup> The Panel has adopted proposals that rely upon Section 4(a)(i), particularly when the party in opposition offers little in the way of rebuttal.

Here, the Union argues that it should be permitted to grieve performance appraisals because Army regulations tie them to various personnel actions. But, the Union failed to cite or otherwise provide those regulations (or any supporting evidence). The only supporting data, then, is the important policy considerations tied to Section 4(a)(i) of the Removal Order. In light of all the foregoing, then, the Panel believes it is appropriate to adopt Management's proposed exclusion.

ii. Removals

The Agency proposes excluding grievances that challenge proposed removals from Federal service. In support, the Agency refers back to the Removal Order as well as arbitration timeframes that allegedly demonstrate the Union's ongoing abuse

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<sup>9</sup> *SSA and AFGE*, 19 FSIP 019 at 9-10 (2019)(SSA)(quoting *AFGE v. FLRA*, 712 F.2d 640,649 (D.C. Cir. 1983)).

<sup>10</sup> Executive Order 13,839, Section 4(a)(i).

of the grievance/arbitration process. The Union opposes on the grounds that Management's position is supposedly illegal.

Under Section 3 of the Removal Order, an agency "shall endeavor" to exclude grievances involving removal actions in a negotiated grievance procedure "[w]henver reasonable in view of the particular circumstances."<sup>11</sup> The Panel has recognized that this language means that a party seeking exclusion of this topic has a burden to demonstrate that exclusion is reasonable under the "particular circumstances" of the dispute before the Panel.<sup>12</sup>

In this dispute, the Agency first refers back to the Removal Order for justification. But, that approach is nothing more than a circular argument. As to the arbitration-timeline data Management offered, the Panel believes it does offer a glimpse into a troubling environment. It cannot be said that arbitrations that take nearly 2 years to schedule represent effective or efficient government. That being said, Management did not offer any data concerning the subject matter of those arbitrations. Had Management done so, this issue could be on very different footing. Given that Section 3 of the Removal Order refers *only* to removals, and Management has not demonstrated that the arbitrations in question involve removals, it cannot be said that these "particular circumstances" justify exclusion of that singular topic from the parties' agreement. As such, the Agency is ordered to withdraw its proposal.

### iii. EDP Claims

The Union claims that existing language prohibiting grievances over EDP should be stricken from the CBA in order to permit the Union to bring forth such grievances. The Agency opposes it because the parties have an existing CBA article that allows employees to informally resolve EDP claims with their individual supervisors.

The Removal Order is silent on this topic, so exclusion turns upon the Federal court precedent discussed in SSA. As such, the Agency - which is the party seeking to continue excluding EDP challenges - must demonstrate in this "particular setting" that its position is the more reasonable one. The Panel believes that the Agency has met this standard.

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<sup>11</sup> Executive Order 13,839, Section 3.

<sup>12</sup> See, e.g., *U.S. Dep't of the Def., U.S. Dep't of the Air Force, Fairchild Air Force Base and Ass'n. of Civilian Technicians*, #138, 19 FSIP 070 at 10-11 (2020).



The parties' CBA has been in effect for several years. It is undisputed that the CBA creates a process that allows employees to informally work with supervisors to resolve any concerns they may have about EDP without resorting to litigation. According to Management, no difficulties have arisen in the application of this framework. The Union did not dispute this allegation. Instead, the Union argues that Management wants this exclusion to continue because it erroneously claimed throughout negotiations that *all* pay-related grievances are illegal. The Agency has not agreed to this statement. The evidence in the record does not support the Union's position. As such, the Union's argument should be rejected. Consequently, the only remaining argument is the Agency's undisputed position that the existing contract language on EDP has created a harmonious workplace. This fact supports continuation of the existing contract language. Based upon this, the Panel declines the Union's proposal because Management has demonstrated that its position is the more reasonable one.

### **III. Article 22, "Leave-Annual"**

#### **A. Agency Position**

The **Agency** proposes altering existing CBA language that governs the topic of the use of leave during shut-down periods at the Agency's facility. Generally, once a year for several days, the Agency must close its facilities for maintenance. All but a relative handful of employees are instructed to not report for duty. The current CBA states the following relevant language:

If the Employer schedules or effects a shutdown of activities, reasonable effort will be made by the Employer to provide work for employees who do not have annual leave. If work cannot be provided for such employees, annual leave may be advanced upon request, to the extent permitted by applicable regulations. In the event of a shutdown that may require leave the employer agrees to negotiate with the Union, if requested, prior to the implementation of such action unless there is a compelling need for the shutdown.<sup>13</sup>

"Shutdown activities" usually coincide with the holidays and, every year, the parties find themselves in negotiations to

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<sup>13</sup> Agency Initial Submission at 10.

address issues such as leave and requests to work during this period. To streamline this process, the Agency proposes including language within the parties' CBA stating that: (1) no employee will be required to use more than 32 hours of paid leave, leave without pay, or compensatory time; and (2) Management will make "reasonable efforts" to provide work for "up to" 25 bargaining-unit employees.<sup>14</sup>

The existing CBA language requires the Agency to negotiate prior to each shutdown unless a compelling reason exists. This requirement is "vague" and inefficient. Management would not need to negotiate every year if standard language existed within the agreement. Its language concerning a cap on "up to" 25 employees is sufficient because it has been enough to cover the number of employees who traditionally work. For example, last year only 13 employees reported to duty during the shutdown period.<sup>15</sup> And, at least one employee wanted to use official time during this period. The foregoing is inconsistent with the intent of the Official Time Order and statutory management rights.

Data for years when a shutdown occurred versus years when they did not demonstrate a significant decrease in production. Shutdown periods must be permitted to continue. The Union argues that Management has treated shut-down periods as intermittent because the situation differed in 2017.<sup>16</sup> The Union's position is simply inaccurate. So, Management needs language that is efficient, consistent with Management's right to assign work, and meets the needs of employees.

## **B. Union Position**

The Union opposes Management's language. It proposes striking Management's language concerning 32 hours of leave because it interferes with the Union's "unfettered right" to decide how bargaining-unit employees will use their leave.<sup>17</sup> The Union also adds language permitting the use of administrative leave (which is another form of paid leave). The Union proposes striking Management's 25-employee limitation. It further argues that past Union acquiescence of shutdown periods were a "one-

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<sup>14</sup> See *id.* at 9.

<sup>15</sup> See Agency Rebuttal at 6-7.

<sup>16</sup> See *id.* at 7.

<sup>17</sup> See Union Submission at 4.

off," and that Management's preferred approach would interfere with the use of holiday leave.<sup>18</sup>

### C. Conclusion

The Panel orders the parties to withdraw their proposals and imposes a slightly modified version of the existing CBA language. The Agency argues, in part, that it needs shutdown periods in order to remain productive. However, the Union has not claimed that the Agency should be prohibited from utilizing these periods. And, nothing in the existing CBA appears to prohibit Management from engaging in this action. So, the true gravamen of the Agency's complaint appears to be that existing language is too "vague" and "inefficient." Management, however, provided little in the way of examples, information, or data addressing how the current language has hindered the Agency's operations in any way. The Agency's claims, then, are largely speculative.

In addition, the parties' proposals present new concepts that could complicate the work environment. The Agency wishes to introduce limitations on how much leave an employee may be required to use; this concept appears to codify an implicit concept that the Agency could force employees to use leave. That concept does not appear in the existing contract, and the Agency offered no details on how it would operate in practice. The Union proposes that one form of leave that could be used is administrative leave;<sup>19</sup> the Union similarly offers no explanation for how this concept would operate in practice. Finally, the parties offer competing language on the appropriate number of employees that could be permitted to work during a closure. The Union provided no data. Management, by contrast, provided data implying that under 25 employees regularly need the ability to work every year. But, Management has not claimed that that the number of yearly working employees have approached 25; indeed, by Management's own admission, only 13 employees worked last year. Given this, it is not clear why Management must codify an explicit number. Additionally, Management complains that some employees report to duty just to use official time.<sup>20</sup> As discussed below, the Panel is imposing language that would curb

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<sup>18</sup> See *id.* at 7-8.

<sup>19</sup> Administrative leave is paid leave that is not charged to an employee's overall leave bank. Under 5 U.S.C. §6329a(b)(1) - enacted in 2016 - an agency "may" place an employee on administrative leave for no more than 10 work days.

<sup>20</sup> See Agency Rebuttal at 7.

the Union's use of official time. So, to the extent this concern is a plausible one, the new language will address it.

Based upon all the foregoing, the Panel will order the parties to accept the existing CBA language to resolve this dispute. Given how fluid the parties' proposals are, coupled with a lack of evidence demonstrating a need for a change, the Panel believes that it is more appropriate to leave the existing language as is. While the parties would have to continue to negotiate prior to each shutdown, there is not enough information in the record to support a conclusion that this process is an inefficient one. Indeed, it is possible that shutdown situations could change year-to-year, thereby making specific language *too restrictive*. However, given Management's stated interest that it is looking to reaffirm compliance with statutory rights, the Panel will order the addition of the following bolded language:

If the Employer schedules or effects a shutdown of activities, reasonable effort will be made by the Employer to provide work for employees who do not have annual leave. If work cannot be provided for such employees, annual leave may be advanced upon request, to the extent permitted by applicable regulations. In the event of a shutdown that may require leave the employer agrees to negotiate with the Union, if requested, prior to the implementation of such action unless there is a compelling need for the shutdown. **Any negotiations under this section must be conducted in accordance with applicable law.**

#### **IV. Article 30, "Parking"**

##### **A. Agency Position**

The Agency proposes striking an existing article that grants the Union 4 reserved parking spaces. This is being done to bring the Agency into compliance with the Official Time Order because it forbids the free use of government equipment and facilities. But, Management is also opposed to Union language that would grant the Union 2 spaces for a "reasonable" cost. When the parties negotiated the CBA in 2014, there were nearly 3,700 employees at the Agency. At the beginning of 2019, there were about 2,900 employees. Consequently, more parking spaces are available to employees. Reserved spaces are, therefore, unnecessary. And, Management reiterates that not offering

rental space to the Union is consistent with the principles of the Official Time Order.

**B. Union Position**

The Union proposes that it receive 2 parking spaces at a "reasonable" rate. The Union currently has 4 spaces, so its proposal represents a compromise. And, its willingness to pay for the spaces demonstrates acknowledgment of the requirements of the Official Time Order.

**C. Conclusion**

The Panel will adopt Management's proposal. The Union has offered little justification for a need for two parking spaces or any parking spaces. In its initial Panel submission, the Union stated such spaces could assist with for "a reasonable transition to a required major Business Change/re-tooling."<sup>21</sup> The Union offered no explanation behind the meaning of this statement or how it supported a continuation of available parking spaces. Accordingly, the Union's position should be rejected.

**V. Article 38, "Union Representation"**

**A. Agency's Position**

This article concerns official time and the use of Agency facilities. Management's position on both topics is influenced by the Official Time Order. First, the Agency proposes limiting all official time to 226 hours per annual year. At the beginning of each fiscal year, Management would provide the Union with an updated amount of official time based upon the number of employees in the bargaining unit. The Union will meet with the Agency when 75% of this time has been used to discuss that use and potentially request more time. The Agency is proposing to limit employees to using official time no more than 25% per year. Having an employee spend 75% of their duty time per year on Agency duties will further the Agency's mission. Indeed, between Fiscal Year 2014 and Fiscal Year 2020, the Union spent an average of 15.5 hours of official time per bargaining unit employee a year.<sup>22</sup> This situation has resulted in the Agency losing 29,857.7 duty-time hours since Fiscal Year 2014.<sup>23</sup>

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<sup>21</sup> Union Submission at 9.

<sup>22</sup> See Agency Initial Submission at 25-26.

<sup>23</sup> See *id.* at 25.

Management also proposes denying the Union access to a conference room/office space and office equipment. Once again, Management is unwilling to enter into a rental arrangement with the Union. Management believes its proposal accurately captures the intent of the Official Time Order. Additionally, because employees would be spending more time on duty activities - under Management's proposal - the Union will have less of a need for office space and equipment. The Agency can reclaim this space and utilize it for more appropriate functions.

### **B. Union's Position**

The Union proposes a staggered system wherein the Union would have 1,992 hours of official time the first year of the CBA, 880 hours the second year, and the third year would see the Union coming into compliance with the Official Time Order's limitations. The current CBA grants the Union 6,000 hours of official time per year, so the Union will need time to adjust. On the topic of Agency facilities, the Union requests a conference room/office space along with equipment. But, the Union is once again willing to pay a "reasonable" rate.

### **C. Conclusion**

The Panel adopts a modified version of the Agency's proposal. The Agency's proposal is premised entirely upon the Official Time Order, which the Panel has emphasized acts as an important source of public policy. The Panel has also admonished all parties to an official-time dispute that they have an obligation to justify their offers on official time for all proposed time that falls under 5 U.S.C. §7131(d).<sup>24</sup> This statutory provision provides that official time authorized under it may only be granted where the parties mutually agree that such time is "reasonable, necessary, and in the public interest."<sup>25</sup> Where a party has been unable to prove that their offer is "reasonable, necessary, and in the public interest," the Panel has applied the limitations set forth in Section 3(a) of the Official Time Order.<sup>26</sup> Under Section 3(a), agencies are

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<sup>24</sup> *Id.* at 13-14.

<sup>25</sup> See 5 U.S.C. §7131(d). By contrast, Sections 7131(a) and (c) require agencies to provide official time for activities involving collective bargaining and FLRA/FSIP proceedings, respectively. These two sections omit the reasonable, necessary, and in the public interest qualifier found in section (d).

<sup>26</sup> See Agency Initial Submission at 14.

instructed that official time for *all* official-time activities - including those under 5 U.S.C. §7131(d) - is ordinarily not to be considered reasonable, necessary, and in the public interest if it exceeds more than 1 hour per bargaining-unit employee per year. That is, agencies are instructed to strive to cap official time at 1 hour per bargaining-unit employee per year.

The Agency in this dispute has patterned its proposal consistent with the approach outlined above. Thus, it limits use of official time to approximately 1 hour per bargaining-unit employee per year. As such, the first year calls for a limitation of 226 hours of official time. Then, at the beginning of each year, the proposal calls for the Agency to examine and potentially modify the pool of official time to ensure that it complies with the requirements of the Official Time Order. By contrast, the Union's proposal calls for a three-year "staggered" approach that starts at *1,992 for the first year.*<sup>27</sup> The Union's offer, then, calls for roughly 9 hours of official time *per employee*. Needless to say, the Union offered no evidence that this time is reasonable, necessary, and in the public interest. Nor did the Union rebut Management's data demonstrating that, in 6 years, the Agency has lost nearly 30,000 hours of duty time because of official time.

Based on the above, it is appropriate to conclude that Management has demonstrated that its proposal is reasonable, necessary, and in the public interest. Accordingly, it is proper to adopt Management's language on official time with minor modification. In its Section 1, the Agency proposes that official time will be provided as reasonable, necessary, and in the public interest as "the Employer deems."<sup>28</sup> To reflect that CBA language is being imposed by the Panel, rather than the Employer, the Panel imposes the following modified language in bold:

Official time (Taxpayer funded union time) is to be used judiciously and limited to the amount of time **that is** reasonable, necessary, and in the public interest as reflected in the Statute.

The other topic covered by this article is the use of Agency resources. In particular, the Union requests the use of Agency space for an office along with Agency-owned office supplies. Once again, the Agency relies upon the policy and

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<sup>27</sup> See Union Submission at 17.

<sup>28</sup> Union Submission 17.

intent of the Official Time Order. That Order implies that a union could avail themselves of the foregoing resources were it to pay for them. However, the Union has proposed only a "reasonable" rate without further explanation.<sup>29</sup> Additionally, the Union offered little in the way of evidence to demonstrate any sort of continued need for these resources. Based upon all the foregoing, then, the Panel adopts the Agency's language concerning Agency resources in full.

**ORDER**

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated above.



Mark A. Carter  
FSIP Chairman

May 23, 2020  
Washington, D.C.

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<sup>29</sup> See *id.* at 21.