



UNITED STATES
FEDERAL SERVICE IMPASSES PANEL

WASHINGTON, DC 20424-0001

July 18, 2006

VIA FACSIMILE TRANSMISSION

Ms. Leslie Randolph
Office of Chief Counsel
Bureau of Alcohol, Tobacco,
Firearms and Explosives
Suite 6100
650 Massachusetts Avenue, NW
Washington, DC 20226

Mr. Jonathan S. Levine
Assistant Counsel
National Treasury Employees
Union
1750 H Street, NW
Washington, DC 20006

RE: Department of Justice
Bureau of Alcohol,
Tobacco, Firearms and
Explosives
Washington, DC and
NTEU
Case No. 05 FSIP 137

Dear Ms. Randolph and Mr. Levine:

Enclosed herewith is the Decision and Order in the above-captioned case.

Sincerely yours,

A handwritten signature in black ink, reading "H. Joseph Schimansky".

H. Joseph Schimansky
Executive Director

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES
WASHINGTON, D.C.

and

NATIONAL TREASURY EMPLOYEES UNION

Case No. 05 FSIP 137

DECISION AND ORDER

The National Treasury Employees Union (NTEU or Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of the Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, D.C. (ATF or Employer).

After investigation of the request for assistance, which concerns the implementation of a comprehensive agency-wide telework program, the Panel determined that the dispute should be resolved through an informal conference with Panel Member Grace Flores-Hughes. The parties were informed that if no settlement was reached, Member Flores-Hughes would notify the Panel of the status of the dispute and the parties' final offers. After considering this information, the Panel would resolve the dispute by taking whatever action it deems appropriate, which could include the issuance of a binding decision.

Pursuant to this procedural determination, Member Flores-Hughes convened an informal conference with the parties on May 10, 2006. The parties reached voluntary agreements on all disputed matters except for the one issue that is the subject of this decision. The Panel has now considered the entire record,

and the parties' final offers and post-conference statements of position.

BACKGROUND

The Employer enforces laws and regulations governing the alcohol, tobacco, firearms, and explosives industries. The Union represents a nationwide bargaining unit of approximately 800 employees who typically work as investigators, inspectors, legal instrument examiners, auditors, contract specialists, program analysts, and in various staff support positions, at grades GS-3 through -15. The collective bargaining agreement (CBA) covering these parties is due to expire on July 20, 2006.

ISSUE

The parties' disagreement concerns the equipment that should be provided to telework participants and, more specifically, whether the Employer should contribute to the cost of high-speed Internet service.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer proposes the following wording:

Approval and Funding of Telecommunications and Equipment. Directorate heads or their designees are authorized to approve expenditures for the following equipment: Laptop Computer, cell phone and/or reimbursement for expenses incurred as a result of using a personal phone for business related long distance calls.

Under its proposal, "all bargaining unit employees participating in telework would receive laptops and most already have them." The vast majority of those eligible to participate under the parties' telework agreement are Industry Operations Investigators (IOI) who "spend approximately 70 percent of their time in the field at licensees'/permittees' premises performing inspections." IOIs perform a variety of other job functions when they are not performing inspections, most of which can be done at home from their laptops without having access to high speed Internet. Those who do not already have such access "can visit their offices to import relevant data" into the ATF's databases. In the Employer's view, therefore, it would be

"inefficient" to require management to pay "50 percent of an employee's high speed Internet access" costs "when the accessing of such databases is probably not more than 30 percent of the 30 percent of the time that they are not performing inspections." Concerning those employees who already have high speed Internet service, "ATF should not be asked to subsidize those persons for private use of such connections."

In addition to its inefficiency, the Union's proposal "could cause undue hardship to ATF administratively and may be unlawful under G[eneral] S[ervice] A[dministration] guidance." Given the lack of uniformity of high speed Internet costs throughout the country, "it begs the question how ATF would enforce, manage, or oversee that employees choose the cheapest providers." It also is unclear whether such costs are considered "utility costs" under the new GSA Telework guidance published in the Federal Register on March 17, 2006, payment of which is prohibited pursuant to a Government Accounting Office decision. Finally, because the GSA guidance states that "agencies are not allowed to pay taxes charged for residential phone lines and/or related equipment which is used for officially sanctioned telework," management would have to establish a mechanism to review bills and extract tax, which also "could decrease efficiency of service."

2. The Union's Position

The Union's proposal is as follows:

Telecommunications and Equipment. ATF will provide the following equipment to employees in the listed categories. Alternatively, at their option, employees may choose to provide their own telework equipment listed below: Category A. Laptop or other computer with monitor, broadband high speed internet access or equivalent with employees splitting the monthly cost and necessary connecting equipment, file cabinet, cell phone, cable line installation costs, phone line installation cost, recurring cable, phone and cell phone charges. Category B. Laptop or other computer with monitor, high speed broadband internet access or equivalent with employees splitting the monthly cost and necessary connecting equipment, file cabinet, cell phone, cable line or phone line installation cost, recurring cable, phone and cell phone charges. Category C. Equipment as appropriate.

The parties have agreed that "employees participating in telework should be able to perform the full range of their duties while teleworking and are expected to be at least as productive at the alternate worksite as they are at the office." Management's refusal to provide high speed Internet service to bargaining unit employees "calls into question" its commitment to telework, and "provides an unnecessary impediment to enable employees 'to be at least as productive at the alternative worksite'." In this regard, "many of the tasks that will be performed at the telework site require access to ATF's information systems" that would be "excruciatingly slow" through "dial-up" or other "low-speed" Internet service. Expecting employees to be equally productive at home while supplying them with "inferior equipment" is "simply unreasonable, a waste of employee work time, and bad management." Nor has the Employer explained why non-bargaining unit employees who telework are provided high speed Internet service, pursuant to ATF Order 222.1, while bargaining-unit employees are not. Given the Employer's record of "intransigence" in negotiating telework with the Union over the past 5 years, "contrary to the mandate by the President and Congress," it should not now be rewarded for failing to plan, properly budget and pay for telework "in whole or in part through office space cost avoidance."

The Union estimates that the annual cost of providing one-half of the monthly fee for high speed Internet service would be about \$225,000, assuming all eligible employees telework. This is far less than the estimate provided by management at the informal conference, and "not an unreasonable figure" to pay for an agency with a Fiscal Year 2006 budget of \$923.6 million "to enable employees on telework to work as quickly, efficiently and transparently as possible." The Alcohol and Tobacco, Tax and Trade Bureau, which was recently "carved out of ATF," has managed to pay for the entire cost of high speed Internet for those on telework on a full-time basis, even though it has a much smaller budget of \$91 million. Similarly, the Patent and Trademark Office pays for all high speed Internet access costs for those on a telework arrangement, while the Internal Revenue Service has agreed to provide each employee who teleworks "a complete work area equal or similar to that of others in his or her occupation." This demonstrates that the Union's proposal is more than comparable to what other Federal employees receive in similar circumstances. Moreover, contrary to the Employer's position, the recent telework guidance offered by GSA specifically states that "agencies may provide equipment for

employees working at an alternative work site, including paying for monthly Internet charges."

With regard to the portion of its proposal requiring that those employees who elect to telework be provided a file cabinet, "it is ironic" that management is asking the Panel to reject a provision that would increase the security of agency operations after arguing for years that telework should not be adopted at ATF because "adequate security could not be provided." In light of the recent serious security breach at the Department of Veterans Affairs involving an employee who was working at home, "ATF's proposal must be viewed with skepticism." The Union's proposal, on the other hand, is consistent with the practices of other Federal agencies, and would cost about \$60 per file cabinet for a one-time purchase, or nothing if ATF decides to recycle file cabinets that are already in use. Finally, in addition to the reasons already provided, the Panel should reject the Employer's proposal because it does not necessarily ensure that teleworkers would receive laptops and cell phones. Under the Employer's wording, discretion to do so ultimately resides in Directorate heads or their designees, some of whom have previously exhibited hostility toward telework.

CONCLUSIONS

Having carefully considered the evidence and arguments presented by the parties in support of their positions, we conclude that the Employer's final offer shall be the basis for resolving the dispute. We find that the expense of the Union's proposal, even by its own estimate, is not insubstantial. Moreover, according to the information provided by the Employer's representatives at the informal conference, given ATF's unique circumstances, the expense cannot be offset through "office space cost avoidance," as the Union suggests. Further, we find that the work product will not be hindered by the current set-up. Accordingly, we shall order the adoption of the Employer's proposal.

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 following:

The parties shall adopt the Employer's proposal.

By direction of the Panel.

A handwritten signature in black ink, reading "H. Joseph Schimansky". The signature is written in a cursive style with a large, stylized "H" and a long, sweeping underline.

H. Joseph Schimansky
Executive Director

July 18, 2006
Washington, D.C.