At this time FLRA remains fully operational. Effective Friday July 31, 2020, the agency now extends the prohibition on in-person filings indefinitely.

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DEPARTMENT OF THE TREASURY BUREAU OF ENGRAVING AND PRINTING WASHINGTON, D.C. and CHAPTER 201, NATIONAL TREASURY EMPLOYEES UNION

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United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF THE TREASURY BUREAU OF ENGRAVING AND PRINTING WASHINGTON, D.C.	
and CHAPTER 201, NATIONAL TREASURY EMPLOYEES UNION	Case No. 99 FSIP 96

DECISION AND ORDER

Chapter 201, 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, 5 U.S.C. § 7119, between it and the Department of the Treasury, Bureau of Engraving and Printing, Washington, D.C. (BEP, Bureau, or Employer).

After the investigation of the request for assistance, the Panel determined that the dispute, which concerned all or parts of nine articles remaining in negotiations over a successor agreement, should be resolved through an informal conference between a Panel representative and the parties. If no settlement were reached, the Panel representative was to notify the Panel of the status of the dispute; the notification would include the final offers of the parties and the representative's recommendations for resolving the matters that remain. Following consideration of this information, the Panel would take whatever action it deemed appropriate to resolve the impasse, including the issuance of a binding decision.

Pursuant to the Panel's determination, Panel Representative (Staff Attorney) Gladys M. Hernandez met with the parties on September 8 and 9, 1999, at the Panel’s offices in Washington, D.C. With her assistance, the parties reached agreement on all of what remained of three articles (Art.) and parts of five others.[(1)] Pursuant to Ms. Hernandez’s instructions, the parties exchanged their final proposals on the remaining articles or parts thereof and submitted written summary position statements on September 13 and 20, respectively.[(2)] Ms. Hernandez has reported to the Panel, and it has now considered the entire record.

BACKGROUND

The Employer prints United States currency, securities, and postage stamps.[(3)] The Union represents a bargaining unit of approximately 200 General Schedule (GS) employees stationed in Washington, D.C., and at the Western Currency Facility (WCF) in Fort Worth, Texas, all of whom are affected by the dispute. These employees occupy such administrative positions as program analyst, mutilated currency specialist, computer specialist, purchasing agent, contract specialist, inventory management specialist, supply technician, occupational health specialist, and clerk-typist, in pay grades GS-2 through -13. By operation of law, the parties continue to be covered by the terms of their July 1994 master collective-bargaining agreement (MCBA) until a successor agreement is implemented.

ISSUES AT IMPASSE

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The parties disagree over: (1) whether, prior to being interviewed on a criminal matter, an employee who is not in custody should be advised of what the Union refers to as "Beckwith rights" (Appendices to Art. 3, Written Statements of Rights and Acknowledgment of Receipt of Rights); (2) various alternative work schedules (AWS) issues, most notably flexbands and core hours (Art. 8, §§ 1, 8.A.2., 8.A.4., 8.B.1.c., 8.B.1.d., 8.C.2. and 8.G.); (3) a few mid-contract negotiations issues, including management's paying travel expenses and per diem for one WCF Union negotiator, and Union briefings (Art. 32, §§ 1.7. 2.2., 2.3, and 2.4.); (4) availability of time-off awards (new Awards Art., § 7); (5) the reopener of the Gainsharing Program (new Awards Art., § 6); and (6) various issues relating to the Flexiplace Pilot Program (New Art.).

POSITIONS OF THE PARTIES

1. "BECKWITH RIGHTS"[(4)]

a. The Union's Position

The Union proposes that the following statement of employees' rights in "a non-custodial interview involving possible criminal matters," which it refers to as "Beckwith rights,"[(5)] be appended to the successor MCBA:

> You have a right to remain silent if your answer may tend to incriminate you. Anything you say may be used against you as evidence later in an administrative proceeding or any future criminal proceeding involving you. If you refuse to answer the questions posed to you on the grounds that the answer may incriminate you, you cannot be discharged solely for remaining silent. However, your silence can be considered in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding your case.

It also proposes that the "Acknowledgment of Employees Rights Form" include a section for employees acknowledging receipt of "Beckwith rights" when appropriate.

Because of the Employer's mission, its investigations into alleged wrongdoing by employees often involve criminal matters, e.g., theft. The Employer, however, is "unwilling to commit" to "staying" administrative actions against employees where there is the "potential" that the employee will be criminally prosecuted. It is necessary, therefore, that the Employer be contractually required to advise employees of their "Beckwith rights" in such situations. In the past, Agency representatives have failed to give some employees under investigation "their proper rights" so it is "especially important" that the contract include a statement of the "Beckwith rights" and obligate the Agency to advise employees of them. Morever, the Employer "benefit[s]" from advising employees of such rights and having them sign a form acknowledging receipt thereof

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because it "avoids litigation" on the matter. Finally, other Department of Treasury agencies with similarly-situated employees such as the Internal Revenue Service (IRS) and the Customs Service, have included these rights in their MCBAs with other NTEU chapters.

b. The Employer's Position

In essence, the Employer proposes that the Union withdraw its proposal. Preliminarily, the Supreme Court's decision in Beckwith does not grant Federal employees the rights delineated in the Union's proposal. In fact, the Union does not cite, nor has it provided a copy of, a court decision or ruling of an "administrative body" granting its proposed rights to Federal employees. It is "unnecessary" to include in the contract the Union's so-called "Beckwith rights," among those rights the Employer already notifies employees of, because investigations involving criminal matters are conducted by "appropriate authorities" and not management or BEP's Office of Security. Moreover, the Union does not cite a single case where an employee was "adversely affected" because the employee was denied, or was not made aware of, the "Beckwith rights."

CONCLUSIONS

Upon careful review of the evidence and arguments presented by the parties, we are persuaded that the Union's proposal provides the better resolution to this issue. To start with, it is unclear why the Union refers to its statement of employees' rights as "Beckwith rights," and our decision to adopt its proposal should not be construed as concurrence with its interpretation of the Beckwith case. Rather, the question before us is whether there are good reasons to append the Union's statement of employee rights to the MCBA. In our view, providing the statement in the contract is in the interest of employees undergoing non-custodial interviews involving criminal matters because it would help to ensure that due process is being observed. Moreover, because it is likely to avert future litigation on the matter, it also appears to be in the interest of management. In addition, the Employer does not argue that adopting the proposal would harm investigations, nor do we believe it would, given that other similarly-situated Department of Treasury agencies have the same contractual requirements with no evidence that they are experiencing problems. For these reasons, we shall order the adoption of the Union's proposal.

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2. AWS PROGRAM

a. The Union's Position

Basically, the Union's proposal: (1) provides for employees on a standard work schedule (5-day week/8-hour day) to work "Mondays through Fridays when possible" and to

work the same hours each day, "except where the Employer determines that the BEP would be seriously handicapped in carrying out its functions or that costs would be substantially increased;" (2) establishes 6 to 9:30 a.m. and 2 to 6 p.m. as the day-shift flexbands for the flexible work schedules (FWS); (3) establishes core hours of 9:30 a.m. to 2 p.m.; (4) requires employees on 5-4/9 and 4-10 compressed work schedules (CWS) to submit any "occasional[]" requests to change their off days within a pay period "no later than 12 noon of the day prior to the [alternate] day to be taken off;" (5) requires new employees to submit "requests for work schedules to their Office Chiefs within 30 calendar days of the effective date of the successor MCBA or "other entrance on duty;" and (6) provides for an employee's request to change work schedules to be effective "at the beginning of the first full pay period after the employee provides written notification to the Employer."

Its proposal on the standard work schedule is the wording in the current contract. Historically, unit employees have worked such schedules, and the Employer has provided no reasons why these administrative employees should not continue to do so. Allowing unit employees to work the same flexbands and core hours regardless of the BEP Office where they are assigned "promote[s] fairness and equity," and is consistent with provisions in the MCBAs between other Federal agencies (e.g., Office of Hearings and Appeals and Federal Deposit Insurance Corporation) and other NTEU chapters. Furthermore, the specific universal flexbands proposed are already being worked by some unit employees. Its proposed core hours give employees "adequate time to coordinate" with others when necessary, so all employees need not work the same schedules. Concerning requests for temporary changes to CWS off days, permitting such requests until 12 noon the day before their regular day off would provide employees with personal flexibility when "unforeseen circumstances arise," while giving management "adequate time" to make workload and coverage adjustments, if necessary. In any case, the Employer may deny any request "based on work requirements and other employees' schedules." With regard to employees' requests to change from an AWS to a fixed schedule, its proposal specifies a date certain for the fixed schedule to be effective. This would avoid indefinite delays, unlike the Employer's proposal, which does not set a time certain for responding to employees' requests. Finally, its proposal is consistent with the current AWS program to the extent that it allows new employees to submit AWS requests within 30 days of implementation of the successor MCBA or their entrance on duty.

The Employer provides no explanation for proposing to modify the current MCBA so that it can change the standard work schedule. It would "severely limit the [U]nion's right to bargain over proposed [E]mployer-initiated changes" to work schedules if management is

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permitted to implement such changes when bargaining is not completed within 7 days. The Employer has not cited any past instances where the Union's actions justify such "a drastic limitation on the Union's bargaining rights." A 7-day bargaining requirement also conflicts with Art. 8, § 2, already agreed to by the parties. Art. 1, which also has been agreed to, "addresses the issue of the precedence of laws and regulations," so referring to the matter in this Article is "unnecessary" and "would only complicate interpretation of the [successor] agreement."

There is "no legitimate reason" for each BEP Office to set its own flexbands and core hours. In this regard, employees have always worked "exclusively on the day shift" while successfully providing administrative support services to production employees working both day and night shifts; therefore, it is unnecessary for unit employees to work the same hours as those they serve. The Employer's stated "need" for this is suspect, because it did not express that need until late in negotiations (specifically, its February 9, 1999, proposal). Until then, the parties' understanding was that the same flexbands and core hours would apply to all employees. In Art. 8, § 8.B.1.f., the parties agreed to allow the Employer to factor in "workload considerations" when deciding whether to approve an employee's AWS request.(6) This provision meets management's interest in "ensuring" office and workload coverage, while giving employees the opportunity to start work at the same time in the morning. The Employer's proposed §§ 1.B.2. and 1.B.3 (which set different and conflicting standards for approval of employees' AWS requests)(7) and §§ 8.A.4.a. and 8.A.4.b. (which allow management to determine an employee's day off under CWS), therefore, are superfluous. Concerning new employees' AWS requests, the Employer's proposed wording is unclear on "whether there is a finite time during which a new schedule will be effective and whether the beginning of the new schedule is solely contingent on the employee's request."

b. The Employer's Position

In essence, the Employer's proposal: (1) provides for employees on a standard work schedule to work a tour of duty "as determined by the Bureau, Monday through Friday when possible;" (2) requires the Employer to provide the Union with notice of proposed changes to "any regularly scheduled workweek" and to "afford" it 7 days to "conduct" impact-and-implementation bargaining except "in cases of emergency declared by the Employer;" (3) specifies that approval of employee requests to work CWS and FWS are to be made "in a fair and equitable manner, subject only to operational needs and mission requirements," when "determining appropriate coverage requirement for each Office;" (4) provides for

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"all AWS determinations" to be "based upon workload requirements and the staffing requirements necessary to ensure sufficient coverage to satisfy Office and customer requirements" and that it "may be necessary" to establish a single schedule to be worked by all employees in a function or group "due to the nature of the work and the interdependence of functions;" (5) allows for the Employer to determine the earliest arrival time and latest departure time for each Office "based on the mission of that Office and its role in support of the Bureau's production operations;" (6) requires management to provide the Union with 10-day notice and an opportunity to bargain prior to changing current arrival and departure times; (7) provides for core hours to be determined "by the Bureau for each Office and shift, keeping in mind the needs to provide appropriate coverage for customer service for [] outside and inside customers, *i.e.*, coordination with other components providing staff for production support and other support functions;" (8) permits the Employer to decide an employee's off day(s) under 5-4/9 and 4-10 CWS "based on the needs of the Office, workload requirements, and the requests of other employees for days off;" (9) requires employees to submit "occasional[]" requests to change their off day at least 3 days (5-4/9 CWS) and 3 workdays (4-10 CWS) before "the day to be taken off;" (10) prescribes that new employees submit "requests for work schedules that have been approved for the employees' organizations to their supervisors at least 5 workdays prior to the effective date of the proposed schedules;" and (11) provides for an employee's request to change work schedules to be effective "the first full pay period after the change is approved."

Its proposal retains the current AWS program which was agreed to by all 17 BEP unions, including NTEU. Because each BEP Office has different needs in performing their functions, it is necessary that they be allowed to set their own flexbands and core hours.

The Union's proposal, on the other hand, makes "significant changes" to the AWS program which are unacceptable because they would: (1) "have a negative impact on the efficiency of the Bureau's operations;" and (2) "make it significantly more difficult to administer the AWS system without a corresponding demonstrable benefit." Specifically, the Union's proposed "uniform" flexbands and core hours would require "all parts of the Bureau's operations" to adopt them, even when the majority of employees are represented by other unions. This "significantly limits the bargaining options available to the Bureau's other unions." Also, the Union "eliminates" a number of requirements under the current AWS program. For example, the use of AWS would no longer need to be "consistent with meeting the Bureau's operational needs." Nor does the Union allow for teams of employees to work the same schedule or require that employees give management "more than

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a few hours notice before changing their days off or work schedules." The Union has not demonstrated a need to make these changes. In this regard, it has not offered evidence of "demonstrable problems" with the current AWS program. On the contrary, since the program has been in place, no grievance has been filed over management's denying an employee's AWS request.

CONCLUSIONS

After thorough consideration of the evidence and arguments presented on these issues, we are persuaded that the Union's proposal should be adopted. It appears from the record that the main focus of the dispute is flexbands and core hours. In this regard, we agree with the Union that providing universal flexbands and core hours is fairer to all unit employees and, in light of previously agreed-upon standards for approval of an individual employee's AWS request (§ 8.B.1.f.), should not adversely affect management's ability to meet its operational needs. Nor can we discern from the record why each Office must be able to establish its own flexbands and core hours for unit employees to best serve the production personnel they support, or why adopting universal flexbands and core hours for unit employees would require the Bureau to adopt them for all its employees. Moreover, we have reviewed the current AWS policy and, contrary to the Employer's contention, it does not include provisions similar to the Employer's proposed §§ 1.B.2. and 1.B.3. In addition, those sections and §§ 8.A.4.a and 8.A.4.b., which allow management to determine employees' off days under CWS, are unnecessary given the wording in § 8.B.1.f. With regard to standard tours of duty, the Union's proposal represents the *status quo*, and the Employer does not put forward an argument in support of its proposed changes on this issue. Similarly, the Employer also does not adequately support its proposal to limit bargaining over changes to tours of duty to 7 days. Finally, if problems materialize with the new AWS program that rise to the level of "adverse agency impact," we suggest that the parties try to work out solutions before the Employer moves to terminate it; problems that do not rise to such a level should likewise be discussed as they occur and not await mid-contract negotiations.

3. MID-CONTRACT NEGOTIATIONS

a. The Union's Position

Under the Union's proposal, the Employer would pay travel expenses and per diem for one WCF Union negotiator when the issues under negotiations "impact" that facility. In addition, its proposal: (1) provides that the Employer's advance written notice of proposed changes "include" specific information (this part mirrors the Employer's proposal); (2) requires the Union either to request bargaining or a briefing from the

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Employer within 7 days of the date of the Employer's notice; (3) mandates that the Employer conduct a briefing within 3 days of the Union's request; and (4) allows the Union 14 days from the date of the bargaining request or the Employer's briefing to submit proposals, unless the Union has not received requested information within that time, in which case it may modify its proposals upon its receipt.

To ensure that a Union representative from the Employer's WCF may participate in negotiations on issues that "have a direct and significant impact on employees [there,]" the representative must be able to travel to Washington, D.C. (the undisputed site of nationwide negotiations), at the Employer's expense. It would not "unduly" burden the Employer to assume such costs. The Union, which has no history of "making costly demands" on management, has "extremely limited resources" and, therefore, cannot afford such travel expenses.

Under the ground rules agreement for successor MCBA negotiations reached with Panel Member Hartfield's assistance, a WCF Union representative was allowed to participate in negotiations via video conference. This "trial" use of video conferencing proved to be inadequate because the Employer never made the video conferencing facility available.[(8)] The Employer's proposed terms for the Union's use of video conferencing for mid-term negotiations are "even more restrictive" than those in the ground rules agreement and, therefore, do not satisfy the Union's interest in having its WCF representative participate in bargaining certain issues.

The parties had a long-standing practice where the Employer briefed the Union on mid-term changes. About 1½ years ago, however, the Employer unilaterally terminated the practice which led to the Union's filing an unfair labor practice charge. Since it terminated the practice, the Employer has "refused" several Union requests for briefings or information. For the Union to make an informed decision on whether to request bargaining over a management proposed change and, if so, to engage in "meaningful bargaining," it must be briefed on the change upon request. Its proposed time frame for requesting and receiving the briefing is "very short;" in fact, it is the same as the amount of time the Employer proposes for the Union to make a briefing or negotiations request. The Union must be permitted to "incorporate" into its proposals "relevant information" received from management after the deadline for submitting proposals to avoid being saddled with "inaccurate or incomplete proposals." The Employer has "backed away" from its earlier proposals allowing the Union to modify proposals submitted before the belated receipt of requested information.

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b. The Employer's Position

The Employer would arrange for a WCF Union representative to participate in negotiations via video conference under specific terms, in lieu of paying the representative's travel expenses and per diem. It also proposes that: (1) any advance written notice of proposed changes from the Employer "contain" specific information (this part mirrors the Union's proposal); (2) the Union request bargaining or a briefing within 10 days from the date of receipt of the Employer's written notice; and (3) the Union submit bargaining proposals within 14 days from the submission of its bargaining request or the Employer's briefing.

Its proposal "attempts to maintain the *status quo*" on the matter of the Employer's paying the travel expenses and per diem for a Union negotiator from WCF. In this regard, the parties' current MCBA does not require it to assume such costs for mid-term negotiations, nor has it "routinely" done so for negotiators of any BEP union. In those "limited situations" where the Union has "shown a specific need" for a WFC representative to participate in negotiations in Washington, D.C., however, the Employer has paid the representative's travel costs. It has also "regularly" offered the Union, at no cost, the use of its video conferencing facility for negotiations. Morever, its proposal keeps the parties "on equal footing" because management does not "ordinarily" have a WCF management representative on its team when negotiating mid-term on Agency-wide changes. Finally, the Union has not demonstrated a need, or provided a "rationale," for changing the *status quo*; in this regard, it has not shown that the payment of Union negotiators' travel expenses and per diem were disputed in past mid-term negotiations, nor has a grievance been filed on the matter in the last 2 years.

With regard to the briefing issue, its proposal to provide them only when necessary represents the current practice, which the Union has not demonstrated a need to change. On this point, the Union has not shown that any of its past briefing requests were denied, and it has never filed a grievance on the matter. Requiring them as a matter of course, as the Union proposes, would only "delay" the start of negotiations. On the travel and per diem issue, the Union's proposal "would impose a considerable expense upon the Bureau without providing any demonstrable benefit."

CONCLUSIONS

Having carefully considered the evidence and arguments presented on these matters, we shall resolve the impasse by adopting compromise wording consisting of: (1) the video conferencing option set forth in the agreement on ground rules for successor MCBA negotiations; and (2) the Union's proposed wording on all others. In our view, video

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conferencing is the better of the two alternatives because it balances the Union’s stated interest in having a WCF Union representative participate in specific negotiations and the Employer’s in containing negotiations costs. Under the Employer’s proposal, however, there is no certainty that a WCF representative would be able to participate in negotiations when needed because the Union’s use of the video conferencing facility appears to be given very low priority. As the Employer has failed to justify its proposed added restrictions on the use of video conferencing, the parties should simply continue to abide by the policy in the ground rules agreement.

Concerning the issue of requiring briefings at the Union’s request, we are convinced that such briefings would facilitate negotiations by allowing the Union to make an informed decision on whether to request bargaining and, if so, to put complete and well-formed proposals on the table. The Union’s proposal also provides time frames which balance its interest in receiving the requested briefings, and the Employer’s in not delaying negotiations. In any case, we do not believe that the briefings would necessarily delay negotiations. Even if some delay occurs, however, it could ultimately benefit the process by promoting communication between the parties. In our view, permitting the Union to modify proposals following receipt of requested information from management also is reasonable, and an aspect of the Union’s proposal not disputed by the Employer. Accordingly, we shall order wording consistent with the discussion provided above.

4. TIME-OFF AWARDS

a. The Union's Position

The Union proposes the following:

> A time-off award is time off work without charge to leave. A time-off award is intended to recognize employees who demonstrate the following types of achievement: 1. Making a high-quality contribution involving a difficult or important project or assignment; 2. Displaying special initiative and skill in completing an assignment or project before the deadline; [and] 3. Ensuring that the mission of the Bureau is accomplished during a difficult period by successfully completing additional work on a project assignment while maintaining the employee’s own workload.

This proposal, which is the same as one put forward by the Employer on February 16, 1999, and subsequently withdrawn, simply recognizes the availability of time off awards for recognizing employee performance and "defines" the standards which must be met for them to be given. Moreover, these awards are provided for in: (1) Government-wide regulations

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(5 C.F.R. § 451.104(a)); (2) the "Department of Treasury Human Resources Directorate Manual Chapter No. 451.2, Time-off Awards;" and (3) labor agreements at two other Department of the Treasury agencies, IRS and the Bureau of Public Debt.

b. The Employer's Position

The Employer "does not agree with the Union's proposal," and essentially would have the Panel order its withdrawal.

CONCLUSIONS

The Employer provides no arguments in support of its position, and the Union's proposal otherwise appears to be unobjectionable. In this regard, it is consistent with an earlier Employer proposal on the same issue, Government-wide regulations, and provisions in MCBAs entered into by other Department of Treasury agencies. Therefore, we shall order the parties to adopt the Union's proposal to resolve the parties' impasse on this issue.

5. GAINSHARING PROGRAM

a. The Union's Position

Under the Union's proposal, "NTEU may reopen negotiations on th[e gainsharing] policy during July 2000. This reopener will be deemed to be a mid-contract reopener as set out in Article 36, [s]ection 3." Contrary to the Employer's argument, the Panel asserted jurisdiction over all gainsharing issues. While the Union has agreed to pilot the gainsharing program developed by the Employer in 1999,[9] it must have the right to bargain another awards system before the end of FY 2000 in case gainsharing is unworkable. In this connection, employees have been without an awards program since 1995 when the parties agreed to replace it with a gainsharing program. The Union already has "significant concerns" about the gainsharing program, so the Employer's proposal limiting bargaining to its impact and implementation is unacceptable. The Employer's own reports show that the "most significant savings" will come from the Agency's production operations where unit employees' efforts will have "little impact." Thus, it is possible that unit employees, with hard work, would achieve costs savings in administrative operations yet reap no benefit if production employees "do not produce a cost savings." If such is the case, it would be "unfair to unit employees" and would "undermine" the program's goal of giving employees an incentive to work more productively. In light of this, the Union must have the opportunity to reopen negotiations over the gainsharing program and negotiate over another incentive awards program once FY 2000 gainsharing data

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is available, particularly if employees are not "adequately rewarded" for their efforts. It proposes a mid-2000 reopener because it would allow the parties to complete negotiations before the end of the program's second year.

b. The Employer's Position

The Employer's proposal is as follows:

> 1. The NTEU may reopen and renegotiate the gainsharing policy at the end of calendar year 2000. Such reopening, if any, will not count as one of the three issues that can be reopened pursuant to the contractual mid-term reopener clause. Such opening would be limited strictly to gainsharing. 2. Thereafter, the Union would be free to reopen the awards article of the contract pursuant to mid-term reopener clause; however, the parties will not in any way disturb the good faith agreement reached or imposed in gainsharing negotiations described in No. 1 above.

Preliminarily, the Panel has not "explicitly indicated" whether it has "issued a final decision on the question of whether the Bureau has a duty to bargain over the [gainsharing program] as part of contract negotiations." It "explicitly waives the question of jurisdiction," however, if its proposal is adopted. In addition, if the Panel determines to decline to assert jurisdiction over the remaining issue concerning "the reopener of the awards article, including gainsharing," the Employer considers itself "bound by the agreements reached on [the other gainsharing] issues under the Panel's auspices." Moreover, in resolving the remaining issue, the Panel should consider "the circumstances under which the program operates." Specifically, its other unions "have claimed ownership of the program," which was developed, is being monitored and operated, and will be reviewed by most of them through the Joint Labor Council (JLC).[(10)]

Even though the parties have already agreed to a contract provision allowing either party to reopen up to three articles after the contract is in effect 18 months (Art. 36, section 3), the Employer "attempts to meet the Union's need by [allowing for] a limited reopener after [g]ainsharing has been in effect 2 years." In this regard, providing for a reopener at the end of calendar year 2000 gives the Union "an early opportunity" to address "any [of its] legitimate concerns about the operations of the program." It would be "excessive and highly unreasonable" to allow the Union to reopen negotiations over the program in July 2000, "only 6 months after it has been negotiated,"[(11)] particularly since the Union has not "clearly articulated" its need for a 6-month reopener. In addition, it runs contrary to the "tradition" of contracts providing for mid-term reopeners. Morever, the Union has "suggested" that unit employees are "entitled" to "a larger gainsharing payout" because the other unions negotiate wages.[(12)] Allowing it to reopen the program "expressly" for the purpose of addressing profit sharing after it has been in operations

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only 1 year "would not be conducive to the effective and efficient operations of the program or the Bureau."

CONCLUSIONS

After carefully reviewing the record on this issue, we conclude that the Employer's proposal should be adopted. We note at the outset that our decision on this issue is based solely on an assessment of the merits of the proposals.(13) Concerning the proper time frame for reopening the program, we believe that the Employer's proposal is the more reasonable because it allows the gainsharing program to run a full 2 years before the parties evaluate and, if necessary, renegotiate it. In our view, the longer pilot would provide a more complete picture of, and allow the parties to better gauge, the program's successes and deficiencies. The Union's proposal, on the other hand, may have the parties back at the table renegotiating gainsharing within 6 months after the successor MCBA goes into effect. Moreover, we are convinced that it is appropriate to limit the reopener to the gainsharing program, as the Employer proposes. In this regard, the Union had an opportunity to put other incentive awards proposals on the table during negotiations and did not do so. More importantly, if its concerns over the gainsharing program are not satisfactorily addressed during reopener negotiations, it will have the opportunity to put forward an incentive awards program during mid-contract negotiations.

6. FLEXIPLACE PROGRAM(14)

a. The Union's Position

Essentially, the Union proposes that: (1) either party may request to negotiate over the program for "up to 45 days after the end of the 1-year [test] period" and must provide "specific proposals" within that time; (2) the program remain in effect during negotiations, "including impasse procedures;" (3) employee participation in the program be voluntary and subject to management approval "pursuant to criteria set out in sections 3. and [7.]B.;" (4) employees be eligible to request to participate in the program if they have a current rating of record of "achieved" or higher, and are not in training status, among other criteria; (5) upon request, employees be provided Government-owned computers and telecommunications equipment, subject to availability of equipment and funds; (6) employees be required to cooperate in any "reasonable investigation" relating to the theft, damage, or loss of equipment conducted by the Employer or local police authorities; (7) it may not be "suitable" for an employee to perform work at home if, among other things, the employee "needs frequent access to equipment or information which cannot be moved from the regular office or accessed from the "alternative duty station"

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(ADS)[15] or it would be "a significant cost" for the Employer to "duplicate the [regular office's] level of security" at the employee's home; (8) the Employer conduct periodic inspections of the ADS "solely to ensure work site conformance with safety standards and other specifications in these guidelines," and "only on days when the employee is working at the ADS with at least 24 hours notice;" (9) an employee complete a "Flexiplace Program Agreement"[16] (Agreement) once, and submit it at least 30 days before the employee makes the first request to work on an assignment at home; (10) a copy of the flexiplace article and "[a] work plan jointly developed [by] the supervisor and the employee" be attached to the Agreement; (11) an employee's first-line supervisor render a decision on the employee's request to perform a work assignment at the ADS within 2 days; (12) Bureau seniority resolve "conflicting scheduling requests" and, if employees have the same seniority, they "toss a coin to decide whose request is approved;" (13) an employee's "[f]ailure to complete a flexiplace assignment in the time allowed due to a violation of the terms of [the] program may be a basis for denying [the] employee's subsequent requests to perform assignments" at home; (14) an employee may be removed from the program for a decline in job performance "attributable to participation in the [f]lexiplace [p]rogram" and, once removed, may not apply for readmission for 30 days; if an employee's performance becomes unacceptable, removal from the program is automatic and the employee may not apply for readmission until an acceptable level of performance is maintained for 90 days; (15) employees be prohibited from working overtime absent special circumstances and prior approval from their supervisors; (16) requests for participating in medical flexiplace "be granted in a fair and equitable manner;" and (17) "any denials" under the program be grievable and, upon request, an employee be provided "the reasons for denial of participation" in writing.

Overall, its proposal "combines a narrow, tasked-based program with a fair process." This has been the "type of program" favored by the Panel. The Employer's proposal, on the other hand, is "duplicative or internally inconsistent." The fact that it is a program already in place at a Department of Defense production facility is irrelevant, because it covers all employees at that facility. At BEP, however, the program will only cover employees performing administrative functions that are "particularly well-suited for flexiplace." Concerning the program's specifics, the pilot should continue while the parties are reviewing the data collected and negotiating any changes, if necessary. To allow either party unilaterally to terminate it would undermine such efforts and "contravenes" the purpose of conducting a pilot. A current performance rating of "achieved" or higher is an "appropriate" performance level for eligibility and "is

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consistent with [G]overnment standard for flexiplace agreements" (e.g., IRS and Health Resource and Service Administration flexiplace agreements with other NTEU chapters). Employees who satisfy this performance requirement should not be "disqualified for undefined misconduct" in the preceding year that may be unrelated to the employees' ability to successfully work at home. Nor should employees with new supervisors be disqualified. Since an employee's former supervisor is required to make ongoing performance evaluations and to issue a departure rating, there is a record on which the new supervisor could rely on to determine whether to approve the employee's request. Also, there is "no reason why" an employee who is not at the journeyman level should not be allowed to participate in the program. Whether an employee is at the journeyman level for the position occupied is "irrelevant" if the tasks performed by the employee are "deemed eligible."

The program should not "discriminate" against less affluent employees who cannot afford to purchase necessary equipment for home use. The Employer, therefore, should provide eligible employees with necessary equipment subject to its availability and Bureau resources. In fact, at present, the Employer has numerous computers not in use. It is necessary to provide a deadline for a supervisor's responding to an employee's request to work on a particular assignment from home so as to ensure a timely response. Since "there may be a justifiable reason" for an employee's failure to meet an established deadline for completing a work-at-home assignment (e.g., the deadline was "unrealistic"), employees should not be removed from the program simply for failing to complete an assignment on time. Nor should employees be removed when their performance level declines if it is not attributable to their participation in the program. There are other avenues available to management for "handling performance problems." Concerning medical flexiplace, its proposal ensures that this aspect of the program is "administered fairly and equitably" without infringing on management's "significant discretion in administering the program." Finally, the Union has "simplif[ied]" the Agreement by putting "all necessary information" in the article. Instead of putting such information in the Agreement, a copy of the article and the work plan developed by the employee and the supervisor would be attached to the agreement.

The Employer's proposal (section 4) establishes "an overly- broad standard" for approving an employee's participation in the program. This "standard" also "conflicts with" and "renders [] meaningless" already agreed to criteria for approving employee requests set forth in sections 3 and 7.B., of this article; those criteria "are more objective and provide a fair basis for evaluating an employee's request to participate in

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the program." The Employer's proposal (section 5.A.) also establishes two "additional" approval criteria. Specifically, the Employer would require: (1) a showing that the task subject of the request can be performed more efficiently at home; and (2) that the employee's working from home would be in the employee's and the Agency's "best interest." These criteria are "contradict[ory]." In addition, the Employer does not define "best interest," allowing it to be interpreted in a manner that conflicts with other program criteria. Moreover, in proposing these criteria, the Employer "fails to take into account other recognized benefits of flexiplace arrangements such as improving family life for employees [], reducing traffic congestion, improving air quality, and conserving Bureau resources." On the matter of medical flexiplace, by restricting participation to those who meet the definition of a "qualified individual with [a] disabilit[y]" under Government-wide regulations, the Employer is "substantially limiting" its existing medical flexiplace program without explanation.

b. The Employer's Position

The Employer's proposal basically provides that: (1) either party may request to negotiate over the program for "up to 30 days after the end of the 1-year [test] period" and must provide "specific proposals" within that time; (2) the program remain in effect during negotiations, except if agreement is not reached within 6 months and a party requests to terminate the pilot; (3) the employees "most suitable" to work flexiplace be those who "can function independently and have demonstrated dependability;" (4) employee participation in the program be voluntary and subject to management approval; (5) employees be eligible to request to participate in the program if they: (a) have maintained a rating of record of "achieved" or higher for the preceding year; (b) have not been disciplined for misconduct during the same period of time; (c) have worked under the approving (current) supervisor for a minimum of 120 days; (d) are "at the journeyman level (not in a training status)" and have been in their current positions for at least 6 months; (e) are willing to "sign and abide by" the Agreement (Exhibit 1), among other criteria; (6) approval of an employee's request to participate in the program be "within the discretion of the Bureau," and approval be granted "only where it [would be] beneficial to both the Bureau and the employee;" (7) approved flexiplace arrangements "be in the best interest of both the Bureau and the employee" and, therefore, "work suitable" to be performed under a flexiplace arrangement be that "which may be performed more efficiently" at the ADS; (8) the placement of Government-owned computers and communications equipment in the ADS be at the discretion of management; (9) employees be required to cooperate in any equipment theft, damage, or loss investigation conducted by the Employer or local police authorities; (10) it may not be "suitable" for an employee

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to perform work at home if, among other things, the employee "needs frequent access to equipment or information which cannot be moved from the regular office" or it would be "costly" for the Employer to "duplicate the [regular office's] level of security" at the employee's home; (11) an employee complete the Agreement once, and submit it at least 30 days before the employee makes the first request to work on an assignment at home; (12) the Agreement "provide employees with sufficient information concerning the [f]lexiplace [p]rogram so as to make an informed decision;" included in the Agreement would be information concerning security, privacy, leave, overtime, time and attendance, and program guidelines and related matters;[(17)] (13) approval of a "Flexiplace Program Work Assignment Request" (Request) (Exhibit 2) submitted by employees for each specific assignment to be performed at home, "is solely and completely within the discretion of the Bureau;" in "considering" a request, the Employer would apply specific criteria including "[w]hether the specific work assignment is suitable for flexiplace as described in section 4.I. above;"[(18)] (14) the duration of flexiplace assignments be "no more than 30 days;" (15) a flexiplace assignment may not include use of the Bureau of Engraving and Printing Management Information System (BEPMIS);"[(19)] (16) at the completion of the flexiplace assignment, both the employee and his/her supervisor complete section 2 of the Request documenting matters specified therein; (17) an employee's failure to complete a flexiplace assignment in the time allowed "may be a basis for denying [the] employee's subsequent requests to perform assignments at [home] or removal from the program;" (18) an employee may be removed from the program for a decline in job performance and, once removed, may not apply for readmission for 6 months; if an employee's performance becomes unacceptable, removal from the program be automatic and the employee may not apply for readmission until an acceptable level of performance is maintained for 1 year; (19) employees performing work at home may not be on an AWS, and that specific days and hours of the flexiplace assignment be agreed to by the supervisor and the employee; (20) employees be prohibited from working overtime absent special circumstances and prior approval from their supervisors; (21) the term "medically disabling conditions" for which an employee may request to work "medical flexiplace" means, with some specific exceptions, that "the employee meets the definition of 'qualified individual with disabilities'" under 29 C.F.R. Part 1614; (22) at the Employer's request, the employee requesting a medical flexiplace arrangement provide "appropriate medical documentation as described in 5 C.F.R. § 339;" (23) an employee's medical condition alone "not [be] ordinarily sufficient for approval of [the employee's request to work] medical flexiplace," *i.e.*, the Employer "must also determine that there are identifiable benefits to the Bureau" in the employee's working a medical flexiplace arrangement; and (24)

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"denials for participation in flexiplace" be grievable and, upon request, an employee be provided "the reasons for denial of participation" in writing.

Preliminarily, employees already can "accommodate their personal lives" through "the use of [the] extensive AWS program and generous family leave and leave transfer programs" in place. Its proposal, unlike the Union's, has some employee eligibility requirements (e.g., higher performance requirement, ability to work independently, and absence of any disciplinary action for misconduct). These "safeguards and requirements," among others, are "necessary to ensure the [Bureau's] effective operations" under the program. Its proposed Agreement, which advises participants of all program requirements and "secures" their agreement to them as a condition precedent to working at home, has been used "successfully" by the Naval Surface Warfare Center at Indian Head, Maryland, also a 24-hour production operation.

Because the employees' administrative tasks are performed in support of the Employer's 24-hour production operation, the "vast majority" of them cannot be performed from home. In light of this, the "wide use of flexiplace" proposed by the Union is not appropriate and would not "operate" successfully. But what is most troubling in the Union's proposal is that, unlike the Employer's, it does not provide for employees' work-at-home requests to be approved. Such a requirement is necessary because the Employer must be able to determine that an employee's working at home would benefit the Bureau. Nor does the Union's proposal appear to allow management to prohibit the use of the BEPMIS from home, which raises security concerns.

CONCLUSIONS

Having considered the record on this matter, we shall order the parties to adopt the Employer's proposal with the understanding that it will make the necessary corrections discussed above.[(20)] The main issues seem to be the separate and specific criteria for determining whether an employee may participate in the program, and whether an assignment is suitable to be performed at home. It appears to us that the Employer's stricter criteria are more likely to ensure the success of the pilot program, benefitting employees in the long run. Contrary to the Union's position, we do not view the proposal as internally inconsistent, but rather setting forth different requirements by which the Employer would make each of these determinations. The Union's proposal, on the other hand, is most troubling to the extent that it would allow employees who do not complete work-at-home assignments in a timely manner, or whose performance slides, to continue to participate in the program. Moreover, because: (1) the Bureau is a production facility which must generate its own operating funds; (2) unit employees support the production

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operations; and (3) the program is merely a 1-year pilot, it may be best to start with the Employer's more restrictive program, which poses less risk to its efficient operations. On the Agreement, it would be more practical for participants to have all major program terms in one document, as would occur under the Employer's proposal. As for the Employer's defining the medical conditions for which an employee may be approved to work "medical flexiplace," we believe, contrary to the Union, that it provides greater assurance than does the Union's that the program will be administered fairly. Finally, 6 months appears to us to be a reasonable period of time for the parties to conclude reopener negotiations before the program may be terminated.

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 pursuant to 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:

1. "BECKWITH RIGHTS"

The parties shall adopt the Union's proposal.

2. AWS PROGRAM

The parties shall adopt the Union's proposals.

3. MID-CONTRACT NEGOTIATIONS

The parties shall adopt a compromise proposal as follows:

> Section 1. For issues that impact the Fort Worth facility, in lieu of having a Fort Worth representative of the NTEU bargaining unit attend negotiations in person, the representative will be provided the opportunity for participation in negotiations via video conference hookup through the Fort Worth Bureau Director's facilities. When it needs the video conference hookup, the Union will give the Employer 24-hour notice in order to allow the Employer adequate time to make the arrangements. In the event that the Employer is unable to make the arrangements for use of the video conference facility at the specific time requested, the parties may adjust their negotiations schedule. The Fort Worth representative will be a full participant in the negotiations during the time he or she is participating via video conference. The parties will be reasonable in the amount of time needed for video conference participation. The Union's proposed wording on sections 2.2, 2.3., and 2.4.

4. TIME-OFF AWARDS

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The parties shall adopt the Union's proposal.

5. GAINSHARING PROGRAM

The parties shall adopt the Employer's proposal.

6. FLEXIPLACE PILOT PROGRAM

The parties shall adopt the Employer's proposal.

By direction of the Panel.

H. Joseph Schimansky

Executive Director

November 24, 1999

Washington, D.C.

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1.The articles that were completely resolved are those addressing merit promotion (Art. 17), disciplinary and adverse actions (Art. 29), and performance appraisals (Art.34). The articles that were partially resolved address employee rights (Art. 3), hours of work (Art. 8), mid-contract negotiations (Art. 32), awards, and flexiplace; the latter two are new articles for which numbers have not been assigned. A number of sections in the flexiplace article were resolved after the informal conference.

2.In its position statement, the Employer accepted the Union's final proposal on § 9 of the merit promotion article. In addition, on November 15, 1999, the Panel was notified by the Employer that it also had accepted the Union's proposed reduction-in-force article. Consequently, neither article will be addressed further herein.

3.BEP reports that it operates "like a private business," with its funding coming from "the product it sells" and not Congressional appropriations.

4.To put this issue in context, in Art. 3, § 6.A., the parties agreed to the following: "Prior to beginning the interview with the employees who are the subject of investigation, they will be advised of the general nature of the interview and their rights to Union representation in writing via the forms in the Appendix." Also, in § 6.B., among other things, they agreed that "[w]hen an employee is interviewed by an investigative official of the BEP, the employee will be informed whether the

investigation is administrative or criminal in nature, whether he/she is the focus of the investigation, and the nature of the matter to be discussed."

5.The Union represents that these rights are provided for in Beckwith v. United States, 425 U.S. 388 (1976)(Beckwith). In fact, the Beckwith Court simply held that "Miranda warnings" are not mandated prior to such interviews. Also, while the appellant in Beckwith was given some warning, the Union's proposal does not mirror it. Moreover, the Union does not cite any Federal Labor Relations Authority or court cases, nor we are not aware of any, which hold that, by law, employees must be advised of the specified rights.

6.Specifically, section 8.B.1.f. requires the Employer "to the extent possible to accommodate the [employee's] request subject to workload consideration."

7.The Employer's section 1.B.2. states that an employee's request will be approved "in a fair and equitable manner, subject only to operational needs and mission requirements." Its proposed section 1.B.3. provides for "all AWS determination [to be made] based upon workload [] and staffing requirements."

8.In this connection, the Employer contends that the Union negotiator did not show up for the session. The parties agree that successor MCBA negotiations proceeded without the Union's WCF representative's participation.

9.The program went into effect at the beginning of Fiscal Year (FY) 1999 while negotiations were ongoing.

10.During the informal conference, the Union implied that the other unions are not permitting its participation in the JLC.

11.The Employer anticipates implementation of the successor agreement by the end of calendar year 1999.

12.At the informal conference, the Union suggested that BEP employees represented by other unions may not be motivated to work hard to achieve the targeted savings because they recently received a 6-percent pay increase. The Employer contends that this will not be the case because these employees have production targets to meet and if they do not meet them they are subject to performance-based actions.

13.Contrary to the Employer's argument, after a thorough review of the parties' bargaining history, the Panel asserted jurisdiction over the gainsharing issues, rejecting its jurisdictional argument that the matter was not a subject timely offered for contract negotiations.

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14.Both parties' proposals have two sections numbered section 5; beginning with the second section 5, the sections have been renumbered in sequence and reference to them are as renumbered.

15.The parties have agreed to the following definition of ADS: "A specific room or area within an employee's primary residence." Simply put, this is the room in the employee's house where work assignments will be performed.

16.The Union's proposed Agreement is very concise; it does not address matters already covered in the proposed article since it proposes that a copy of the Article be attached to the Agreement. Concerning the ADS, it requires employees only to "take reasonable steps to minimize [others] opportunit[ies to] access [] records and files" and it does not require an employee to have a fire extinguisher in the home; the other two ADS requirements set forth are the same as the Employer's.

17.The Employer's proposed Agreement, in part, tracks language in its proposed article. Paragraph 1 in the proposed Agreement is inconsistent with its proposed section 3.B.: the former states that a participating employee have a rating of record of acceptable, while the latter provides for a rating of "achieved" or higher for the past year; this appears to be an oversight on the part of management. Provisions in the Agreement which are not in the article include requirements for the ADS to be lockable from the outside and for there to be a "readily accessible fire extinguisher" in the house. Also, paragraphs 12 through 14 are the same as the Union's proposed sections 5.L., 5.M., and 5. N., respectively; they concern limitations on Government liability for damages to an employee's real and personal property, employee coverage under the Federal Employees Compensation Act, and protection of Government records. Paragraph 11 is similar to the Union's section 5.O.; the differences are the purpose for which the ADS may be periodically inspected ("to ensure work site conformance with safety standards and other specification in these guidelines," as proposed by the Employer) and how soon in advance of an inspection the employee must be notified (the Employer proposes 1 hour).

18.The Employer's proposal does not have a section 4.I., and its section 4 does not address the suitability of work assignments; instead, its section 5.K. addresses this matter. This appears to be an oversight on the Employer's part.

19.This is a secured automated system.

20.See footnotes 17 (concerning paragraph 1 of the Agreement) and 18, supra.

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