



## DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. FOOD AND DRUG ADMINISTRATION CENTER FOR VETERINARY MEDICINE, ROCKVILLE, MARYLAND and CHAPTER 282, NATIONAL TREASURY EMPLOYEES UNION

### DECISION AND ORDER

The Department of Health and Human Services (DHHS), U.S. Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), Rockville, Maryland (Employer) and Chapter 282, National Treasury Employees Union (Union or NTEU) filed a joint 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.

Following an investigation of the request, which concerns the procedure to be used for allocating offices to bargaining unit employees at CVM's Metro Park North facility, the Panel determined that the matter should be resolved through an *Order to Show Cause (OSC)*. Under this procedure, the Employer was directed to show cause why the Panel should not impose the office selection procedure/formula at CVM that FDA and Chapter 282, NTEU previously agreed would apply at FDA's White Oak Campus. The Employer also was given the opportunity to offer an alternative proposal, and the Union was given the opportunity to rebut the Employer's response to the *OSC*. The parties were advised further that after considering the entire record the Panel would take whatever action it deems appropriate to resolve the impasse, which may include the issuance of a *Decision and Order*. The Panel now has considered the entire record.

### BACKGROUND

The FDA is a public health agency charged with safeguarding the health of Americans; specifically, it researches and approves drugs and medical devices for use, and safeguards a major part of the U.S. food supply. The CVM regulates the manufacture and distribution of food additives and drugs that will be given to animals, including animals from which human foods are derived, as well as food additives and drugs for pet (or companion) animals. The Union represents approximately 3,800 employees at FDA, about 300 of whom work at CVM in a variety of professional and non-professional positions, GS-5 through -14. The parties are covered by a collective bargaining agreement (CBA) that is due to expire on October 1, 2013.

In July 2010, FDA and Chapter 282, NTEU reached a Memorandum of Understanding titled "Office Space Allocation and Office Selection at White Oak Campus" (referred to herein as the White Oak MOU). The purpose of the White Oak MOU was to provide "guidance for allocating office space and for selecting offices at the FDA buildings and facilities on the FDA White Oak Campus." Among other things, the parties agreed that:

Within each functional group bargaining unit employees will select offices in order based on the process described below:

- a. The FDA will place bargaining unit employees in rank order based on a score assigned to each employee comprising of the sum of a number of points equal to his/her GS-grade (e.g., GS-13 equals 13 points), plus a number of points equal to his/her number of years of Federal service (as determined by his/her Federal service computation date (SCD) augmented by any military commissioned corps service not already included in the Federal service computation date) and rounded to the nearest year (e.g., 12 years 7 months of service equals 13 points). In the example used above, the result is 26 points.
- c. For all moves, in case of a tie, the bargaining unit employee with the earliest Federal service computation date will choose first. If there is still a tie, the bargaining unit employee with the greatest amount of Department of Health and Human Services (DHHS) service will choose first. If there is still a tie after that, the bargaining unit employee with the greatest amount of FDA service will choose first.

- f. For all moves, management will not select offices for bargaining unit employees except for employees assigned to an Immediate Office suite and support employees assigned to workstations not located in individual employee offices.

#### **ISSUE AT IMPASSE**

The parties essentially disagree over whether the office selection procedure/formula in the White Oak MOU also should apply to the allocation of offices to bargaining unit employees at CVM.

#### **POSITIONS OF THE PARTIES**

##### **1. The Employer's Position**

The Panel should not implement the White Oak MOU office selection procedure at CVM's Metro Park North facility. Instead, the Employer proposes the adoption of the following wording to resolve the impasse:

Within a functional area, employees with the highest combination of grade plus Federal service computation date are allocated office selection priority, and tie-breakers are determined by years of FDA government service. However, an employee shall never have priority over a higher graded employee who is more than one (1) grade interval above the lower graded employee (for example, a GS-13 could trump a GS-14 if the GS-13 had more years of Federal service, but a GS-12 could not trump a GS-14) unless the lower graded employee is on a career path that ends no less than one (1) grade interval below the higher graded employee.

Imposition of the White Oak MOU office selection procedure/formula at CVM would have a negative impact on the morale of higher graded employees. In this regard, many of CVM's scientists "have very few years of prior federal service and would be passed over [by] administrative personnel for prime office space" if the White Oak MOU process is followed. As a result, these skilled scientists, who are critical to CVM's primary functions in protecting human and animal health, "may seek alternative employment opportunities and/or discourage other highly qualified scientists from seeking employment at CVM." Such positions are classified at a higher grade because they require "considerable education and experience." Thus, employees who perform higher graded duties, have greater responsibilities within the organization, encumber positions that are difficult to recruit and retain, and are most critical to the Agency's success, "should be given priority in obtaining coveted office space."

Furthermore, the parties who agreed to the White Oak MOU never intended it as a "one-size fits all method that would meet the needs of the FDA's varying facilities." Its imposition at CVM would create "an unnecessary precedent that could potentially be applied to all FDA Centers going forward." The space at White Oak, which is a sprawling facility similar to a university campus, is also much different than the space at CVM, "which is more akin to an office park." Consequently, the White Oak Campus has much more flexibility regarding office relocations than CVM, where management would be less likely "to locate an alternative space to accommodate the employee's needs and ameliorate potential morale issues." Moreover, although the parties' previous CBA contained a procedure/formula for selecting office space, "the parties elected to forego such a provision" in their current CBA. Applying the White Oak MOU to CVM would "defeat[] the intent of the parties' new CBA which provides the opportunity for tailored and customized procedures that are distinct from one another and determined on a case-by-case basis." Finally, while the FDA has not contested the validity of the White Oak MOU, "it is not widely viewed as a model agreement within" DHHS. In fact, the largest of the FDA Centers located at White Oak, the Center for Drug Evaluation and Research (CDER), "is no longer following the terms" of the White Oak MOU.

##### **2. The Union's Position**

The Panel should impose the White Oak MOU office selection procedure at CVM. Historically, NTEU's interest has been to grant higher priority of office selection to employees with more seniority, while "FDA's interest has been to permit higher graded employees to choose their offices before lower graded employees, regardless of seniority." The government already rewards higher graded employees with higher salaries, so Chapter 282, NTEU "has protected the interest of loyal, long-serving government employees by negotiating non-monetary job benefits for them," including procedures for the selection of office space. The White Oak MOU office selection formula agreed upon by the parties combines both grade and seniority. Because "the formula has worked, and has been a good compromise" that balances the parties' interests, "there is no need for NTEU to compromise further." In addition, the Employer's argument that implementing the White Oak MOU at CVM would have a detrimental effect on the morale of higher graded employees should be rejected. In this regard, paragraph f of the White Oak MOU "already guards against" the "doomsday scenario" the Employer envisions by specifically exempting support employees from the office selection procedure. Finally, the Employer's claim that CDER is no longer following

the terms of the White Oak MOU "is misleading and deceptive" by implying that CDER no longer wishes to use the formula combining SCD and grade. When CDER gave notice that it wanted to reopen the White Oak MOU for negotiations, NTEU declined and filed a grievance on the basis that a subordinate agency "does not have the power to terminate" an MOU that was negotiated with FDA at the Agency level. The parties are "likely to settle this matter and leave the Grade + SCD method as is." In the meantime, "CDER has continued to use Grade + SCD for office moves."

#### **CONCLUSIONS**

Having carefully considered the parties' submissions in response to the *OSC*, we conclude that the Employer has failed to demonstrate why the office selection procedure/formula previously agreed upon at the White Oak Campus should not be imposed at CVM. The Employer's primary concern, which its alternative proposal attempts to address, is that adoption of the formula may result in CVM scientists seeking alternative employment and/or discouraging other scientists from seeking employment at CVM. Its concern, however, is unsupported by evidence that application of the formula to bargaining unit employees at the White Oak Campus since July 2010, including to higher graded employees, has resulted in any of the adverse impact it forecasts at CVM. Nor was specific factual information offered to substantiate its conjectures about the potential impact at CVM. The lack of evidence about White Oak may be because the White Oak MOU exempts support employees assigned to workstations not located in individual employee offices from the office selection procedure, as the Union points out, or for some other reason. We are not suggesting that office assignment procedures have to be uniform across locations but the burden was on the Employer to make its case for a different arrangement in the current circumstances. Our conclusion is that the Employer has not shown cause as to why the White Oak MOU office selection procedure/formula should not be imposed at CVM. Accordingly, we shall order its adoption to resolve the parties' impasse.

#### **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 impasse 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:

The parties shall adopt the office selection procedure/formula agreed upon for the White Oak Campus in July 2010 at the Center for Veterinary Medicine's Metro Park North facility.

By direction of the Panel.

H. Joseph Schimansky  
Executive Director

May 4, 2012  
Washington, D.C.