

Labor News & Views

Volume II, Issue 2

March - April 2001

Human Resources Service Center, Northwest
3230 NW Randall Way
Silverdale, WA 98383

www.donhr.navy.mil

An employee and labor relations publication for Naval activities
served by the Human Resources Service Center - Northwest

BEST REGARDS

We'd like to take this opportunity to recognize Mr. William "Bill" Kalin and Mr. Norman "Norm" D. Hill. Both Bill and Norm have worked at most our local Naval activities during their federal career. Together they represent over 60 years of federal service. Presently Bill is the department head and Norm is a senior Labor Relations Specialist at the Appeals and Investigations Department at the Human Resources Service Center - Northwest.

Bill is retiring the beginning of May, Norm the end of April. It's a double whammy for the labor-management community. Their contributions to the field of employee and labor relations are considerable. We wish to honor their careers and the difference they've made in labor management relations.

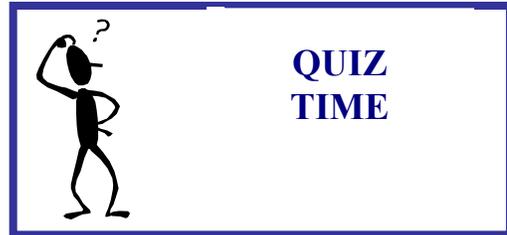


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QUIZ TIME

The Federal Labor Relations Authority (FLRA) is an independent agency responsible for administering the labor-management relations program for 1.9 million Federal employees worldwide, approximately 1.1 million of whom are exclusively represented in 2,200 bargaining units. For which of the following functions is the Federal Labor Relations Authority responsible?

- a. To arbitrate employee grievances.
- b. To conduct elections to see if a union has been selected as the exclusive representative.
- c. To hear and decide EEO complaints.
- d. To investigate and prosecute Unfair Labor Practice allegations.
- e. To resolve Labor-Management negotiations impasses.
- f. To determine the appropriateness of bargaining units.
- g. To decide employee appeals of adverse actions
- h. To supervise elections of union officers.

(See "FLRA" on page 2)

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority, created by Congress in 1979 with the passage of the Civil Service Reform Act, is responsible for administering the Federal Service Labor Management Relations Statute.

The Authority is comprised of, (1) a three member board; (2) an office of General Council; (3) a number of Regional offices headed by a Regional Director; (4) a corps of Administrative Judges; and (5) the Federal Services Impasses Panel.

Among the Authority's responsibilities are:

- (1) Determining appropriate bargaining units in federal agencies (Answer f of the Quiz).
- (2) Supervising or conducting elections among employees in a bargaining unit to determine which union will be their exclusive representative (Answer b).
- (3) Conduct hearings and resolve complaints of unfair labor practices (Answer d).

In addition, the Federal Services Impasses Panel, an entity of the Authority, is responsible for assisting agencies and exclusive representatives in resolving negotiation impasses. (Answer e).

The Authority does not:

- (1) Arbitrate employee grievances (Answer a). That function is typically done by a third party such as an arbitrator hired by the agency and the exclusive representative;
- (2) Hear/Decide EEO complains (Answer c). Either an arbitrator or the Equal Employment Opportunity Commission does that function.
- (3) Hear/Decide employee appeals of adverse actions (Answer g). Either an arbitrator or the Merit Systems Protection Board does that function.

- (4) Supervise elections of union officers (Answer h). That is an internal function of the unions

The President with the advice and consent of the Senate appoints the three members of the Board for a term of five years. The terms are staggered such that one new member is appointed every two years. Not more than two members of the Board may be adherents of the same political party. The members, once appointed may only be removed by the president for inefficiency, neglect of duty, or malfeasance in office.

THE HIGH COST OF H2O

After eleven years, the Small Business Administration (SBA) notified the union (AFGE) that it would end its practice of providing bottled water for approximately 40 employees. The practice started when the water in the building was judged unsafe, then continued because a high level manager "liked the water." However, an SBA auditor informed local management that spending appropriated funds for water, now that the city-supplied water was safe, was "unauthorized."

SBA proposed to purchase a small refrigerator where employees might store their own water. It also proposed to grant employees a total of two hours of administrative leave so that they could set up a voluntary bottled water club.

In addition to arguing that the existing practice violated Comptroller General rulings, SBA argued that it had cost about \$24,000 over the eleven year period.

The union (AFGE) argued that employee morale would be affected if the practice were discontinued. Also, ending the practice would cause lengthy interruptions in the workday (employees making trips to the microwave or cafeteria to satisfy their need for hot and cold drinks). AFGE proposed that the practice continue. Absent continuing the practice, it

proposed a two-year phase-in of the change and even offered to pick up part of the cost for the bottled water.

The parties couldn't agree so dispute went to a mediation-arbitration process. When mediation didn't work, the mediator assumed the role of arbitrator and issued a binding decision. The arbitrator ordered that the practice be discontinued after four months - just enough time to get through the summer months. She bought into SBA's suggestion that employees be given administrative time to form a water club, but ordered SBA to grant more than two hours for such purpose if necessary and, of course, workload permitting. Finally, the arbitrator agreed that SBA should buy a refrigerator but one that is "sufficient size" to store not only drinks, but also lunches and snacks (not sure what that had to do with water, but that's what the arbitrator said).

What can be learned by this? Simply a reminder that even in these enlightened times the parties sometimes can't resolve even simplest issues. What do you want to bet that the mediation-arbitration process cost more than the \$24,000 SBA spent on water over the past eleven years?

Got Ideas? You can contact us at nwlabor_nw@nw.hroc.navy.mil. We would enjoy hearing your ideas for our newsletter.



I WANT

MY MTV

After years of providing cable television service at government expense in employee sleeping quarters and the fire station's day room, Marine Corps (USMC) pulled the plug. While it didn't tamper with the TV in the day room, USMC discontinued the free service in the sleeping quarters.

This didn't go over well with the Union (AFGE) and the parties went to arbitration. The arbitrator rejected USMC's argument that it was prohibited by law from spending taxpayer dollars on such things. She also ruled that, even if the interpretation of the law were correct, it had a contractual obligation to negotiate with AFGE before eliminating the cable service. So, turn the TV's back on and reimburse those employees who had spent their own money on cable service.

The story goes on. USMC said "I don't think so" and went to FLRA (he Authority), arguing that the agency argued the arbitrator's award violated 31 USC Section 1301(a) which requires that government money be spent only on objects for which appropriations were made. They threw in a couple of Comptroller General (CG) decisions indicating that the government can pay for employee televisions in very limited circumstances.

To USMC's dismay, the Authority found nothing illegal in the arbitrator's award. It concluded that the agency failed to demonstrate that its appropriations act prohibited the use of funds for television services or that CG decisions ruled out such benefits.

Because the agency failed to prove that its original agreement with the union was unlawful, the Authority agreed with the arbitrator that it could only eliminate the cable TV service through negotiations.

The importance of this case is not that the fire station kept their MTV, rather that the USMC could have notified AFGE of the change in working conditions and pulled the plug without harming their relationship with AFGE.

WHEN IS IT NOT SETTLED?

Settlement is a wonderful word and can conjure warm and fuzzy feelings in even the coldest of hearts. We assume that the parties have reached a mutually satisfying end to a potentially volatile

dispute. Everyone is back at work and happy. Or are they?

There are times when the parties challenge settlement agreements, arguing everything from “coercion” to “incapacity” to “lack of authority” of a party’s representative. The Merit Systems Protection Board (MSPB) has looked at this matter and sheds some light on this subject.

Coercion: A settlement can be set aside if it can be demonstrated that the activity threatened to take a disciplinary action it knew or should have known could not be substantiated. In *Fassett v. USPS*, the Federal Circuit found that the settlement included drug-testing requirements that went beyond the drug-testing program, were not based on reasonable suspicion or were required by law, rule, regulation or contract. When the activity removed the employee for failing to abide by the flawed settlement agreement, the Court ordered the employee back to work.

Validity: The validity of a last-chance settlement agreement can also be challenged. A “last-chance” settlement agreement is normally entered into when the employee is under a removal action and is given a “last-chance”. In *Sumrall v. Air Force* an employee argued he signed the agreement at the insistence of his Dad, a manager employed by the activity. The employee also claimed he was emotionally impaired at the time due to alcoholism and clinical depression. To add salt to the wound, management did not let him contact his representative before signing the agreement.



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Incapacity: Even though the employee signed the settlement agreement, he later submitted a letter written by his psychiatrist and psychologist indicating it was unlikely that the employee would have signed the statement that he “read and understood the conditions and restrictions in the settlement agreement” and was “fit to be able to understand the agreement” unless the employee was under some kind

of duress or coercion, or unless he was not thinking clearly because of stress from work

No Meeting of the Minds: In *Gill v. VA*, there was a document that was believed to have been the settlement agreement. The problem with it was that the activity’s representative was the only one that had signed it and there was no evidence of a “meeting of the minds.” You would think that it goes without saying that both parties to the dispute must sign the agreement to make it valid.

Lack of Authority: It isn’t just the employee who questions the validity of a settlement. In *Russell v. Navy*, the activity argued that the activity’s representative lacked authority to enter into a settlement agreement with a suspended employee.

TRAINING OPPORTUNITIES		
Date	Class	Location
5 March	Art of Listening	HRSC
6-9 March	Supervisor's Role	HRSC
7-9 March	Intermediate Project Mgmt	HRSC
12-15 March	Contracting for non-contracting personnel	HRSC
12-15 March	Supervisor's Role	HRSC
20-21 March	Leadership skills for the 21 st Century	Keyport
23 March	Selection interview techs	Keyport
26 March	Building motivating work environments	HRSC
9-11 April	Budgeting for non-budget personnel	HRSC
19-21 June	Supervisors Conference 2001	CMO Club SUBASE
If interested, contact Code 30 at HRSC at 315-8145 A complete list of training offered by HRSC can be found at www.donhr.navy.mil/Training/index.htm		

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