

***American Federation of Government Employees Local 2139,
National Council of Field Labor Locals and U.S. Department
of Labor, Wage and Hour Division, Dallas***
Federal Labor Relations Authority
61 FLRA No. 130
0-NG-2870
August 11, 2006

Ruling

The FLRA ruled that a proposal to require the agency to pay for employee parking was not contrary to law and not inconsistent with an agency regulation.

Meaning

Where an agency has leased parking from GSA in the past, a proposal that would require it to continue to do so is negotiable unless it violates an agency regulation for which there is a compelling need.

Case Summary

The union proposed that the agency pay for parking in a federal building for those employees who use their private vehicles to conduct agency business.

The agency contended the proposal was inconsistent with law, FLRA precedent and an agency regulation prohibiting the agency from entering into special leasing arrangements for parking. The agency further asserted that the employees do not have a need for paid parking as required by the agency regulation. The agency also contended that providing parking for employees in this office would have a negative impact on employees elsewhere whose paid parking had already been taken away. Finally, the agency contended that paid parking at this facility was a de minimis matter.

The FLRA explained that matters within an agency's discretion are subject to negotiations to the extent they are consistent with law. The FLRA cited precedent holding that where an agency has leased parking spaces from GSA, a proposal requiring the agency to subsidize parking costs is negotiable.

Regarding the regulation prohibiting additional special lease agreements, the FLRA explained that an agency regulation does not bar negotiations unless there is a compelling need for the regulation. The agency did not present a compelling need claim. The FLRA found the proposal did not violate the law cited by the agency because that provision addressed reimbursement for employee rented spaces in public lots.

The FLRA recognized that providing parking at this facility could affect the morale of employees elsewhere. However, this contention goes to the merits of the proposal not its negotiability.

Whether the issue is de minimis has nothing to do with its negotiability, the FLRA ruled. That concerns the agency's bargaining obligation. The agency stated in its submission this was not a bargaining obligation dispute and the union's response made no mention of a bargaining obligation dispute.

Judge / Administrative Officer

Dale Cabaniss, Chairman, and Carol Waller Pope, Member

Full Text

Decision and Order on Negotiability Issue

I. Statement of the Case

This case is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute), and concerns the negotiability of one proposal. The Agency filed a statement of position (SOP), the Union filed a response, and the Agency filed a reply.

For the reasons set forth below, we find that the Union's proposal is within the duty to bargain.

II. Proposal and Meaning

As relevant here,¹ the Union proposed the following:

The Agency will provide parking at the El Paso Field Office for bargaining unit employees who use their privately owned vehicles [(POV)] a majority of the time on Government business.

Record of Post-Petition Conference at 2.

According to the Union, the proposal is intended to require the Agency to comply with Agency regulations mandating that the Agency provide parking spaces to employees who demonstrate a "compelling need," as defined in the regulation, for such spaces. Union Response at 3 (citing DLMS-2, §§ 526 C; 525 I).² The Agency makes an undisputed claim that, under the proposal, it would be required to enter into a special lease agreement with the General Services Administration (GSA) for additional parking spaces. Agency SOP at 4. Consistent with the foregoing, we find that the proposal would require the Agency to lease additional parking spaces to be provided to employees who meet the requirements for compelling need in the Agency's regulations.

III. Positions of the Parties

A. Agency

The Agency argues that the proposal is contrary to law because it would require the Agency to use appropriated funds to pay for employee parking that is not authorized by law or regulations. According to the Agency, 5 U.S.C. § 5704 permits the reimbursement of parking only on those days when the employee uses a POV to conduct official business.³ The Agency further relies on Authority precedent finding contrary to law and regulation an arbitrator's award requiring reimbursement for parking expenses on a day when the rented spaces were not used for official business. Agency SOP at 7-8 (*citing Internal Revenue Service, Houston District, 18 FLRA 483 (1985) (IRS, Houston I)*).

The Agency further argues that the Union's proposal is contrary to an Agency regulation that prohibits it from entering into special leasing arrangements in order to make parking available to employees, except as required by law or three exceptions that, according to the Agency, are not present in this situation.⁴ According to the Agency, the El Paso Field Office is located in a Federal building owned and operated by the GSA, and the Agency would be required to enter into a special leasing arrangement with GSA in order to obtain parking for employees. The Agency also claims that the proposal is contrary to its general travel regulations, which provide that employees who park in commercial lots may be reimbursed either for their daily cost of parking or, in certain circumstances, for a pro rata share of monthly parking expenses.⁵

The Agency next states that it notified the Union in November 2002 that it intended to discontinue paying for parking, except as authorized by law, at the time its lease agreements came up for renewal at each location in the Wage and Hour Division of the Region. According to the Agency, it has released parking spaces at six locations, in accordance with this policy, without any request to bargain by the Union. The Agency asserts that it would have a negative effect on the morale of employees who are required to pay for parking if it were required to continue paying for parking at the El Paso Field Office.

In response to the Union's arguments that agency-paid parking is negotiable, the Agency asserts that the decisions relied on by the Union are inapposite because the Agency's decision to discontinue paying for parking here is de minimis. In this regard, the Agency asserts that employees have access to public transportation and a transit subsidy program, as well as reimbursement for parking when their POVs are used for Agency business. With respect to the Union's argument that Agency regulations require that it provide parking to "officials demonstrating a compelling need[,]" the Agency claims that: (1) the regulation only applies where the Agency already controls parking spaces; and (2) the employees do not meet the "compelling need" criteria in any event. Agency Reply at 4 (citing DLMS-2 526).

B. Union

The Union argues that Authority precedent supports its position "that agencies can pay for employee parking." Union Response at 3 (*citing United States Dep't of the Treasury, Internal Revenue Service, Houston District, 25 FLR 843, 848 (1987) (IRS, Houston II); United States Dep't of Labor, Wash., D.C., 44 FLRA 988, 994-95 (1992) (DOL)*). Further, the Union claims that Agency regulations require that parking be reimbursed for employees who have a "compelling need" for parking, as defined in the regulations. *Id.* at 3 (quoting DLMS-2, § 525 I). In this regard, the Union claims that the employees travel away from their offices to conduct investigations "several times per month," that they use POVs because government owned vehicles are not available, and that public transportation is not feasible. *Id.* at 3-4.

With respect to the Agency's argument that providing parking is contrary to law and regulation, the Union asserts that the Agency has provided parking at the El Paso office for at least 15 years, as part of its lease, and that the Agency provides parking at "multiple locations around the country." *Id.* at 4. With respect to the Agency's argument that the proposal is contrary to DLMS-7 1-4.1(d)(2), the Union argues that this regulation applies to commercial space, not Agency-leased space. The Union further claims that the fact that the Agency has ceased paying for parking at other locations and the Union did not seek to bargain does not affect the negotiability of this proposal. Finally, the Union states that the loss of paid parking will adversely affect morale in the El Paso office and that, if the Agency is concerned about employee morale region-wide, then it should not have stopped paying the parking costs of employees in other locations.

IV. Analysis and Conclusions

In general, "matters concerning conditions of employment are subject to collective bargaining when they are within the discretion of an agency and are not otherwise inconsistent with law[.]" *Patent Office Professional Ass'n, 53 FLRA 625, 648 (1997)*. In this regard, the Authority has held that an agency is required to bargain over the substance of changes in employee parking, as well as their impact and implementation. *DOL, 44 FLRA at 994-95*. Specifically, the Authority recently found that where an agency has leased parking spaces through the GSA, proposals requiring management to subsidize employee parking costs are within the duty to bargain. *See AFGE, Local 12, 61 FLRA 209, 215 (2002); see also United States Dep't of Transportation, FAA, Northwest Mountain Region, Renton, Wash., 55 FLRA 293, 299 (1999)*.

Here, it is undisputed that the Agency has leased parking spaces from GSA for employees for many years. Although the Agency claims that leasing additional spaces would be inconsistent with its regulations governing special lease agreements, "[u]nder section 7117(b) of the Statute, an agency regulation does not bar negotiation on an otherwise negotiable provision unless the agency can demonstrate a compelling need for the regulation under section 2424.11 of the Authority's Regulations." *NTEU, 55 FLRA 1005, 1009 (1999)* (Member Cabaniss dissenting on other grounds). The Agency has not asserted here that a compelling need exists for its regulations and we therefore need not address them.

Further, although the Agency argues correctly that 5 U.S.C. § 5704 requires that employees who park in commercial lots be reimbursed on a pro rata basis, the proposal concerns parking provided by the employer, rather than reimbursement of employee-rented public parking. See *AFGE, Local 12*, 61 FLRA at 215 (distinguishing proposals concerning agency-leased space and commercially controlled space).

Consistent with the foregoing, the proposal is not inconsistent with law or regulation.

With regard to the Agency's other arguments, the Agency notes that it has released parking spaces at a variety of locations and claims that there would be a negative effect on morale of other unit employees if it continued to pay for parking at the El Paso location. Even if true, however, this claim goes to the merits -- not the negotiability -- of the proposal. The Agency also claims in its reply that the change in parking here is de minimis. The claim that a change in employees' conditions of employment is de minimis is a bargaining obligation dispute, rather than a negotiability dispute. 5 C.F.R. § 2424.2(a)(2). In its SOP, the Agency specifically stated that it did not assert any bargaining obligation disputes with respect to the proposal, and the Union made no arguments regarding that issue in its response. See SOP at 6. Thus, insofar as the Agency's de minimis argument raises a new bargaining obligation dispute, such argument is not responsive to the Union's arguments raised for the first time in its response and is not permitted under the Authority's regulations. 5 C.F.R. § 2424.26(a) (purpose of reply is to respond to arguments made in Union's response).

V. Order

The proposal is within the duty to bargain and the Agency shall, upon request, or as otherwise agreed to by the parties, bargain with respect to the proposal.⁶

¹The proposal submitted in the Union's petition also concerned parking for disabled employees. Thereafter, the dispute concerning disabled employees was resolved and the proposal was modified to eliminate that subject. See Record of Post-Petition Conference at 2. Thus, the issue of disabled employees will not be addressed further.

²DLMS-2 § 526 C provides, in pertinent part:

Parking permits/authorizations will be issued at the building of principal employment to:

... 3. Officials demonstrating a compelling need. (See Definitions, 525 I).

DLMS-2 § 525 I provides in pertinent part:

Compelling Need. *Employees using their POVs for official business may qualify under this provision when all of the following criteria are met:*

1. The use of a taxicab, public transportation, or transportation provided by the Department is not available or feasible, and

2. the official is using their POV on a majority of workdays, which is defined as at least 12 days per month, and

3. the official travel must be qualified for reimbursement under Federal travel regulations (emphasis in original).

SOP, Attachment 1 at 5, 3-4

³5 U.S.C. § 5704(d) provides, in pertinent part:

In addition to the rate per mile authorized under subsection (a) of this section, the employee may be reimbursed for --

(1) parking fees. ...

⁴DLMS-2 § 528 A. provides, in pertinent part:

Where parking facilities are not available through the normal leasing arrangements for space, the DOL will not enter into any special leasing arrangements, or make arrangements through appropriated funds, in order to make them available, except as required by law. Exceptions to this general Federal guideline are:

1. Incremental payments to, or for, employees with disabilities accessible parking (see 526 B.), or:

2. If provided for in a collective bargaining agreement with a recognized union, or:

3. A written finding ... that significant impairment to morale, retention, and operating efficiency will result from a lack of sufficient parking space.

SOP, Attachment 1 at 6.

⁵DLMS-7 § 1-4.1d(2) provides, in pertinent part:

(i) Daily Parking. Employees who park their POVs on commercial parking lots at or near their regular place of work and pay for the parking on a daily basis will be reimbursed the cost of parking on those days management authorizes the use of the POV for official business.

(ii) Monthly Parking. Where management determines that an employee who rents a parking space at or near the office on a monthly basis does so because of the need to have a POV available for official business, the employee will be reimbursed a prorated share of the monthly rental on those days the employee both uses the parking space and management authorizes the use of the POV for official business.

SOP, Attachment 2 at 7-1-86-7-1-87.

⁶In finding this proposal negotiable, we make no judgment as to its merits.