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Must the Army negotiate salaries with a union representing teachers at a school for Army dependents?

by Jay E. Grenig

Fort Stewart Schools

v.

Federal Labor Relations Authority and Fort Stewart Association of Educators

(Docket No. 89-65)

Argument Date: Jan. 10, 1990

ISSUE

In this case the Supreme Court is called upon to determine whether the compensation of federal employees whose rates of compensation are not specifically provided for by law is a negotiable condition of employment.

FACTS

The Army operates two elementary schools at Fort Stewart, Ga. The schools provide free public education for dependents of military and civilian personnel who reside on the federal property. The schools' teachers are represented by the Fort Stewart Association of Educators.

During contract negotiations with the Army, the Association submitted three proposals for bargaining. The first proposal set mileage reimbursement, mandated certain insurance benefits, and gave the Association the right to review and comment on salary schedules. The second proposal requested a salary increase of 13.5 percent for the ensuing school year. The third proposal detailed various leave practices.

The Army refused to negotiate these three proposals, contending they did not involve mandatory bargaining matters under the Federal Service Labor-Management Statute. The Association filed a negotiability appeal with the Federal Labor Relations Authority.

The FLRA agreed with the Association and ordered the Army to negotiate the three proposals with the Association. *Fort Stewart Association of Educators and Fort Stewart Schools Agency*, 28 FLRA 547 (1987). The FLRA's conclusion was upheld by the U.S. Court of Appeals for the Eleventh Circuit in *Fort Stewart Schools v. FLRA*, 860 F.2d 396 (11th Cir. 1988). The court of appeals deferred to

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the FLRA's conclusion that compensation-related proposals are generally negotiable where the compensation of the federal employees in question is not set by statute.

BACKGROUND AND SIGNIFICANCE

The Supreme Court has agreed to hear two cases this term involving the scope of the duty to bargain under the Federal Service Labor-Management Statute. (See also *Department of Treasury, Internal Revenue Service v. FLRA*, Docket No. 88-2123.) The Federal Service Labor-Management Statute governs labor relations between federal agencies and their employees. The Statute requires the management officials of federal agencies to bargain with their employees' unions regarding "personnel policies," "practices," and "matters . . . affecting working conditions."

The Statute exempts certain enumerated management rights from this duty to negotiate. The management rights provision of the Statute provides that "nothing in this chapter shall affect the authority of any management official of any agency —(1) to determine the . . . budget . . . of the agency." The Statute also provides that the duty to bargain does not extend to proposals that are "inconsistent with any Federal law or any Government-wide rule or regulation," and that the duty to bargain extends to proposals that are "the subject of any agency rule or regulation . . . only if the Authority has determined . . . that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation." In determining whether a regulation is supported by a compelling need, the FLRA considers whether the employing agency's regulation implements an "essentially nondiscretionary" mandate of law or other outside authority. The FLRA also considers whether a regulation is essential to an agency's accomplishment of its mission.

The dependents schools statute (20 U.S.C. § 241(a)) directs the Army to provide an education comparable to that provided at public schools in the state and provides that "[f]or the purposes of providing such comparable education, . . . compensation . . . may be fixed without regard to the Civil Service Act and rules." The Army has adopted a regulation requiring that the salary schedules of its schools be equal to those of the local public schools.

The courts of appeals are split as to whether compensation for federal employees whose rates of compensation are not entirely fixed by statute is a negotiable condition of employment. In addition to the Eleventh Circuit, the U.S. Court of Appeals for the Second Circuit has ruled that

the compensation of teachers at domestic Army schools for dependents is negotiable. *West Point Elementary School Teachers Association v. FLRA*, 855 F.2d 936 (2d Cir. 1988). See also *Nuclear Regulatory Commission v. FLRA*, 859 F.2d 302 (4th Cir. 1988), *reh'g en banc granted* (1989).

However, the U.S. Court of Appeals for the Third Circuit has held that compensation is not a negotiable condition of employment. *Department of the Navy, Military Sealift Command v. FLRA*, 836 F.2d 1409 (3rd Cir. 1988) (applying a statute requiring that the pay of civilian mariners employed by the Navy be set by comparison with mariners employed by private vessels). See also *Fort Knox Dependent Schools v. FLRA*, No. 87-3395 (6th Cir. May 11, 1989), *petition for reh'g en banc pending* (filed June 23, 1989); *Department of Defense Dependents Schools v. FLRA*, 863 F.2d 988 (D.C. Cir. 1988), *reh'g en banc granted* (Feb. 6, 1989) (negotiability of compensation of teachers at overseas dependents schools).

The Supreme Court is now asked to resolve this conflict between the circuits. As there are approximately 40 federal pay systems not entirely fixed by statute, including those for teachers and other personnel at domestic dependents schools, the question of whether these federal employees may negotiate over compensation is a question of great importance to the employees and their employing agencies.

ARGUMENTS

For Fort Stewart Schools (Christopher J. Wright, Assistant to the Solicitor General, Department of Justice, Washington, DC 20530; telephone (202) 633-2217):

1. Congress did not intend to authorize federal employees to bargain collectively over their compensation.
2. The Association's proposal to increase teachers' salaries by 13.5 percent conflicts with management's right to determine the agency's budget. Since teachers' salaries are by far the largest item in any school's budget, the proposal would result in an unavoidable and significant increase in the cost of operating the Fort Stewart schools.
3. The Association's proposals are non-negotiable because they conflict with an Army regulation for which there is a "compelling need"—the regulation requiring that the salary schedules of its schools be equal to those of

the local public schools.

For the Federal Labor Relations Authority (Counsel of Record, William E. Persina, Acting Solicitor, Federal Labor Relations Authority, 500 C Street, SW, Washington, DC 20424; telephone (202) 382-0781):

1. Where compensation is not fixed by law, compensation is negotiable as a condition of employment.
2. The Army has not shown that the Union's proposals violate management's right to determine its budget. Only those bargaining proposals involving cost that have the effect of requiring management to revise its budget needs should be barred from bargaining under the budget right.
3. The Army has not established that a "compelling need" exists for its regulation requiring teachers' salaries to be equal to those paid teachers in local schools.

For the Fort Stewart Association of Educators (Counsel of Record, Richard J. Hirn, 400 N. Capitol Street, Suite 326, Washington, DC 20036; telephone (202) 822-7850):

1. Congress expressly intended to authorize those employees whose salaries are not set by statute to continue to bargain over wages as they had under the Executive Orders that previously governed federal sector collective bargaining.
2. The Army has failed to demonstrate that the wage increase sought by the Association would interfere with its right to determine its budget.
3. The Army has failed to demonstrate that the Association's proposals are inconsistent with Army regulations or that there is a compelling need for the regulation requiring teachers' salaries to be equal to those paid teachers in local public schools.

AMICUS BRIEFS

In Support of the Federal Labor Relations Authority and the Fort Stewart Association of Educators

The American Federation of Labor and Congress of Industrial Organizations, the American Federation of Government Employees, the American Federation of Teachers, and the National Treasury Employees Union.