

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

Department of the Army
Brooke Army Medical Center
Fort Sam Houston, Texas

And

American Federation of Government
Employees, AFL-CIO, Local 1033

Case No. 19 FSIP 053

DECISION AND ORDER

This case, filed by the Department of the Army, Brooke Army Medical Center, Fort Sam Houston, Texas (Agency) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, concerns a dispute over ground rules for a successor Collective Bargaining Agreement (CBA). The Agency is the Army's largest in-patient hospital with a 425-bed Academic Medical Center, the sole verified Level I Trauma Center within the Department of Defense (DoD), and serves as the premier medical readiness training platform for both the Army and the Air Force. The mission of the Agency is to protect the Nation by ensuring Total Force Readiness through innovative, high quality care and the development of elite healthcare professionals. The American Federation of Government Employees, AFL-CIO, Local 1033 (Union) represents approximately 1,143 bargaining unit employees consisting of all permanent civilian, non-supervisory professional employees employed by the Brooke Army Medical Center, Fort Sam Houston, Texas.

BARGAINING AND PROCEDURAL HISTORY

On December 3, 2018, the Agency notified the Union of its intent to amend the parties' CBA, which was set to expire on September 1, 2019, and the parties began exchanging ground rules proposals. On February 27, 2019, the parties met for 8 hours to negotiate the ground rules. After February 27th, the parties continued to review and exchange emails over the ground rules but were unable to come to an agreement. Then, on June 18, 2019, the parties engaged in mediation with FMCS Commissioner Judy Perez for approximately four hours, but were unable to reach an agreement. That same day, the Mediator released the parties. On June 23, 2019, the Agency filed the instant request for Panel assistance.

On August 8, 2019, the Panel voted to assert jurisdiction over the two remaining ground rules proposals and to resolve them through a Written Submissions procedure, with an opportunity for rebuttal statements. The parties timely provided their final offers, written positions, and rebuttal statements, which were considered by the Panel.

FINAL OFFERS AND POSITIONS OF THE PARTIES

1) Item 6: Union Time

a) Agency's Final Offer

The Union Negotiation Team shall be granted eight (8) hours total of Union Time a week to prepare for negotiation sessions. No additional Union time is authorized to the Union Negotiation Team members. No premium pay or any form of compensatory time is authorized for Union Negotiation Team members pursuant to any phase of the negotiation process.

The Agency proposes granting the Union 8 hours of Union Time, also referred to as official time, each week of negotiations to spend preparing for negotiations. In support of its proposal, the Agency argues that the Union is failing to abide by the parties' current negotiated agreement on official time and, therefore, should only be entitled to 8 hours of official time for negotiation preparation each week. In its rebuttal, the Agency further supports the offer of 8 hours of official time per week as appropriate due to the Union repudiating Executive Order 13837.

b) Union's Final Offer

The Union proposes establishing a bank of 16 hours of official time each week to be spent as needed by the Union for negotiation preparations is appropriate. In support of its proposed bank, the Union argues that the Agency attempted to coerce the Union to drop certain grievances against the Agency in exchange for additional official time for negotiation preparation.

c) Conclusion

The Panel orders the parties to adopt a modified version of the Agency's proposal. Here, neither party has provided any evidence to support that: (1) the proposed amount of official time is reasonable, necessary, and in the public interest; or (2) a separate official time agreement exclusively for negotiation preparation in addition to their existing negotiated agreement of official time under Section 7131(d) is necessary or prudent.¹ The parties have a negotiated agreement in place that provides a process for the Union to request, the Agency to approve, and the parties to document official time. Both of the parties' proposals make no reference or consideration of the parties' negotiated agreement and on its face appear to entitle the Union to an automatic grant of official time in addition to the parties' negotiated agreement on official time.

The Union's allegation that the Agency attempted to tie additional official time for negotiation preparations with the Union's abandonment of grievances against the Agency is unsupported and of no consequence to the appropriateness of the requested official time. The Agency's argument that because the Union is failing to follow the parties' negotiated agreement on official time the Agency should grant additional official time, albeit less than the Union wants, is problematic. The Agency is free to seek enforcement of the current negotiated agreement and/or to bargain a new negotiated agreement, but entering into an additional agreement is not a means to address such issues. Accordingly, the Panel orders the parties to adopt a modified version of the Agency's proposal, as noted in bold, that directs the parties to follow its existing negotiated agreement on official time.

¹ Section 7131(a) of the Statute allots for official time for designated union representatives to take part in negotiations, but is not to be used for time to prepare for negotiations. Although section 7131(a) of the Statute does not require an agency to provide official time to prepare for negotiations, it is well-established that the parties may negotiate over and agree to provide official time to prepare for negotiations under section 7131(d) of the Statute. *American Federation of Government Employees, AFL-CIO, Local 1692*, 3 FLRA 305, 308 (1980).

The Union Negotiation Team shall be granted Union Time to prepare for negotiation sessions **in accordance with the parties' negotiated agreement on official time**. No additional Union time is authorized to the Union Negotiation Team members. No premium pay or any form of compensatory time is authorized for Union Negotiation Team members pursuant to any phase of the negotiation process.

2) Item 7: Other Issues Related to Bargaining

a) Agency's Final Offer

No audio, or visual recording of negotiations by any means. Individual team members, or official Scribe's hand-written or typed notes will be permitted. A Scribe will be provided by the Employer for the purpose of taking notes during negotiations, and will not be considered a member of either Bargaining Team. All records prepared and maintained by the Scribe are subject to approval of both Parties and will be provided to either party upon request. A copy of the official notes will be retained with the Employer and Union file for historical records management.

The Agency proposes that no audio or visual recording be permitted during negotiations. The Agency takes the position that permitting recording would have a chilling effect on the negotiations. In order to document bargaining, the Agency proposes it will provide a scribe that will not be a part of either bargaining team, the scribe's bargaining notes would be subject to the approval of both parties, and negotiation records would be available upon request.

b) Union's Position

The Union is agreeable to having a scribe at negotiations but only if the scribe is not affiliated with either party. The Union expressed its concern that a scribe selected by the Agency would be biased and inappropriate. The Union is agreeable to a neutral scribe who is not affiliated with either party, permitting both parties to provide their own scribe, or permitting recording of the negotiations.

c) Conclusion

The Panel orders the parties to adopt a modified version of the Agency's proposal. The Agency objects to permitting any recording of the negotiation sessions, and there is FLRA case law that acknowledges and legitimizes the Agency's concern of the effect recording can have on negotiation sessions.² The Union's insistence on recording negotiation sessions is based on a perceived necessity in absence of a neutrally appointed scribe. As permitting the Union to provide its own scribe would likely result in the need for an additional Agency employee to use official time to serve as a scribe, this arrangement is not in the best interest of efficient and effective government. Further, the Agency's proposal permits members of the Union's negotiation team members to take their notes. While the Union's concern of potential bias by an Agency-provided scribe is legitimate, the Union did not support how its proposal permitting recording of negotiation sessions would adequately replace or supplement the role of a scribe. Accordingly, the Panel orders the parties to adopt a modified version of the Agency's proposal, as noted in bold, that increases transparency of the scribe's notes by ensuring that the Union receives copies of all records prepared and maintained by the scribe.

No audio, or visual recording of negotiations by any means. Individual team members, or official Scribe's hand-written or typed notes will be permitted. A Scribe will be provided by the Employer for the purpose of taking notes during negotiations, and will not be considered a member of either Bargaining Team. All records prepared and maintained by the Scribe **must be provided to both parties with acknowledgment of receipt.** A copy of the official notes will be retained with the Employer and Union file for historical records management.

² See *Sport Air Traffic Controllers Org.*, 52 F.L.R.A. 339, 345 (1996) citing *NLRB v. Bartlett-Collins Co.*, 639 F.2d 652, 656-57 (10th Cir.1981), cert. denied, 452 U.S. 961 (1981) (The Board recognized that recording of bargaining sessions "has a tendency" to inhibit the parties and "may cause them to talk for the record rather than advance toward an agreement" and lead to "posturing for the record instead of the spontaneous, frank, no-holds-barred interchange of ideas and persuasive forces that successful bargaining often requires.").

ORDER

Pursuant to the authority vested in 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 under 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 parties to adopt the provisions as stated above.

By direction of the Panel.



Mark A. Carter
Chairman, FSIP

November 14, 2019
Washington, D.C.