

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

U.S. DEPARTMENT OF DEFENSE
DEFENSE LOGISTICS AGENCY

And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL 169

Case No. 22 FSIP 038

DECISION AND ORDER

The U.S. Department of Defense, Defense Logistics Agency (Agency or DLA) filed a request for assistance over negotiation of a successor Collective Bargaining Agreement (CBA) with the Federal Service Impasses Panel (FSIP or Panel) on February 25, 2022, in accordance with 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute). On June 1, 2022, the Panel asserted jurisdiction over the dispute and directed the issues be resolved in the manner described below.

BACKGROUND

The Agency manages the global supply chain for the Army, Navy, Air Force, Marine Corps, Coast Guard, ten combatant commands, other Federal agencies/partners, and allied nations. The DLA is responsible for contracting, purchasing, storing, and distributing most of the consumable, expendable, and repairable items for the Department of Defense. Its primary purpose is to meet the logistics requirements of the armed forces for food, clothing, fuel, repair parts, and other items.

The American Federation of Government Employees, Council 169 (Union) represents approximately 17,000 bargaining unit employees throughout the country that occupy positions in the Agency such as Police Officers; Firefighters; Program and Procurement Analysts; Fork Lift Operators; and Distribution Facilities Specialists.

BARGAINING AND PROCEDURAL HISTORY

On February 21, 2019, the Agency provided the Union notice that it was reopening the parties' CBA. The parties entered into their current CBA on May 19, 2016. The parties' CBA expired on May 18, 2019, but remains in effect until they reach agreement over a successor CBA. The parties negotiated over the successor CBA and then mediated with the assistance of a FMCS Commissioner. On March 31, 2020, the Agency filed a request for Panel assistance over fourteen (14) remaining provisions of their successor CBA in Case No. 2020 FSIP 041. The Panel ordered the parties to resolve their dispute through a Written Submissions procedure, and then issued a Decision and Order in the matter on September 21, 2020.

Following the Panel's Decision and Order, the Union submitted the thirty-seven articles on which the parties had been able to reach agreement during negotiations, to its membership for ratification. The Union subsequently notified the Agency that its membership voted to not ratify the agreement. The parties resumed negotiations over those articles. The parties then mediated with the assistance of FMCS Commissioners, but were unable to reach agreement on eight of the articles.

Around this same time, the Agency requested to reopen two articles, which the Panel had issued in its Decision and Order in Case No. 2020 FSIP 041. Specifically, the Agency sought to renegotiate those articles with the Union in accordance with Executive Order 14003. The parties bargained and mediated with the assistance of FMCS Commissioners. Unable to reach agreement, the Agency filed a request for Panel assistance, which included those two articles in addition to eight articles, which the parties were unable to reach agreement following the failed ratification.

On January 21, 2022, the Agency submitted twenty-nine tentatively agreed upon (TA'ed) articles, which the parties TA'ed for a second time between December 1, 2020 and February 3, 2021, to the Union for ratification. On February 17, 2022, the twenty-nine TA'ed articles, again, failed Union ratification as a package. Then, on February 25th, the Agency filed this request for assistance over those twenty-nine articles citing provision #11 of their Ground Rules that if Union ratification fails, "the parties have the option to reconvene negotiations within 10 working days or seek assistance from the appropriate third party."

After investigating the Agency's request for assistance, the Panel decided to issue an Order to Show Cause (*OSC*) to the Union as to why the Panel should not order the parties to adopt the twenty-nine articles as previously TA'ed by the parties. As part of the Panel's *OSC*, the Agency was provided the opportunity to file

a reply brief following the Union's *OSC* response. Both parties filed timely briefs and the Panel has reviewed them.

ISSUES AT IMPASSE

The parties are at impasse over the following twenty-nine articles from their successor CBA that failed ratification in January 2022:

- Preamble
- Article 1: Parties to the Agreement
- Article 2: Governing Laws and Regulations
- Article 7: Fraud, Waste, and Abuse
- Article 8: Equal Employment Opportunity
- Article 10: Career Development and Training
- Article 12: Position Classification
- Article 13: Merit Promotion
- Article 14: Employee Assistance Program
- Article 17: Membership in Professional Associations
- Article 20: Hours of Duty
- Article 23: Leave Without Pay
- Article 24: Annual Leave
- Article 25: Sick Leave
- Article 26: Family and Medical Leave Act
- Article 27: Court Leave
- Article 28: Official Travel
- Article 30: Emergency Essential, Non-Combat Essential, and Capability-Based Volunteers
- Article 31: Office Communication Tools
- Article 32: Wage Surveys
- Article 33: Contracting Out
- Article 35: Drug Testing Program
- Article 40: Personnel Records
- Article 41: Payroll Allotments
- Article 42: Union-Sponsored and MLA Training
- Article 43: Access to the Agreement
- Article 44: Police Officers, Fire Fighters, and Non-Appropriated Fund Employees
- Article 45: Employer/Union Cooperation
- Article 46: Personal Audio Devices

POSITIONS OF THE PARTIES

1. The Union's Position

The Union did not file a response to the Panel's *OSC* on the merits of the twenty-nine articles, previously TA'ed by the parties. Rather, the Union argued that the Panel should order the parties to resume negotiations, citing the parties' Ground Rules. Referring to the same Ground Rules provision that the Agency cited in its request for Panel assistance, the Union cited #11 from the parties' Ground Rules. In pertinent part, this Ground Rules provision states, "(i)f ratification is not achieved the parties have the option to reconvene negotiations within 10 working days or seek assistance from the appropriate third party." Note that neither the Agency nor Union requested to reconvene negotiations within 10 working days of the failed Union ratification on February 17th.

The Union cited to various FLRA caselaw in its response. First, the Union cited to *Social Security Administration* 46 FLRA 1404. (*SSA*), which stands for the premise that an agency's right to agency head review pursuant to § 7114(c) of the Statute is only triggered after ratification. Next, the Union cited to *SSA* and *Internal Revenue Service*, 64 FLRA 426 (*IRS*), as standing for the premise that it is a unfair labor practice (ULP) for an agency to refuse to resume bargaining following non-ratification of an agreement.

The Union claimed that the Agency is violating its statutory duty to bargain in good faith by trying to "usurp" the parties' Ground Rules by bringing the matter to the Panel before completing bargaining. The Union also claimed that there are "multiple outstanding proposals" the Union has repeatedly requested to negotiate with the Agency. Finally, the Union argued that the Panel has "no legal boundary to assert jurisdiction over the matter as the Ground Rules are controlling."

Then, the Union addressed the twenty-nine articles subject to the *OSC*. For each of those twenty-nine articles, the Union inserted the exact same argument, which is as follows:

This TA'd Article is a result of the MLA negotiations held in 2019-2020 and were under the influence, directly and/or indirectly of the Trump-era Executive Order which have since been overturned by President Biden's Executive Order 14003. This Executive Order also requires Permissive Bargaining at the election of the Union. Additionally, the signed and agreed upon ground rules requires negotiation between the parties after a "failure to ratify vote" from the Union. Because of all these aforementioned reasons, the Council believes that the Panel

should not take jurisdiction over this TA'd Article and order the parties back to the table to resume negotiations.

2. The Agency's Position

The Agency's rebuttal to the Union's *OSC* response claimed that the Union failed to establish why the Panel should not order the twenty-nine articles, previously TA'ed by the parties. Addressing the Union's repeated rationale for each of the twenty-nine articles, the Agency provided the same response for each article as well. The Agency rejected the Union's argument that the Trump Executive Orders had any bearing on the articles in this case. The Agency equally rejected the Union's argument that the parties' Ground Rules require the Panel to order the parties to resume negotiations. Additionally, the Agency claimed that Executive Order 14003 has no bearing on these negotiations as it does not provide a union with the right to bargain permissively, at its election. In the absence of any reasoning from the Union to the contrary, the Agency requested the Panel order the language the parties previously TA'ed for the twenty-nine articles in this matter.

CONCLUSIONS

Having carefully considered the parties' responses to the Panel's *OSC*, the Panel concludes that the Union has not shown cause why the Panel should not impose the twenty-nine TA'ed articles to resolve the parties' impasse. First, the Union's argument that the parties' Ground Rules require the Panel to decline jurisdiction and order the parties to resume negotiations is without merit. Here, the Panel's jurisdiction over these twenty-nine articles is appropriate. The parties, with the assistance of FMCS, met to negotiate and mediate over these twenty-nine articles twenty-two times between December 1, 2020 and February 3, 2021.¹ The parties' Ground Rules anticipate a failed ratification and provide that the parties may resume negotiations within ten working days or seek the assistance of an appropriate third party. The Union provided no evidence that either party attempted, or even inquired, to resume negotiations following the Union's failed ratification vote. Moreover, the Union has not argued, nor did it file a grievance, that the Agency's interpretation of the parties' Ground Rules was inappropriate.

Next, the Union's argument that the Agency committed a ULP by refusing to negotiate with the Union is outside the Panel's purview. The Panel resolves impasses and has no authority to make merit determinations over ULP allegations. To date, the Union has not pursued a ULP over the Agency's alleged refusal to negotiate following the failed ratification.

Ultimately, the Union did not provide a single argument on the merits of any of the twenty-nine articles at issue in this case. While the Union insists the Panel should return the parties to negotiations, the Union did not identify any proposals it

intended to bargain. Nor, did the Union identify any provisions from the parties' previously TA'ed language that was now unacceptable to the Union. Ultimately, the Union failed to provide any cause why the Panel should not impose the previously TA'ed language for the twenty-nine articles 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, the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the following:

The parties shall adopt the twenty-nine articles as TA'ed, which failed Union ratification in February 2022, to resolve the impasse over the successor CBA.



Martin H. Malin
FSIP Chairman

August 3, 2022

ATTACHMENT

- Parties' TA'ed Articles

¹ The Union's claim that these twenty-nine articles were "a result of the MLA negotiations held in 2019-2020 and were under the influence, directly and/or indirectly of the Trump-era Executive Order" is inaccurate. Rather, the parties resumed negotiations over these twenty-nine articles after the first failed Union ratification in December 2020. In fact, President Biden's Executive Order 14003, which revoked the President Trump's Executive Orders the Union claims directly and/or indirectly influenced their negotiations, was issued in January 2021, while the parties were still negotiating/mediating.