United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of DEPARTMENT OF VETERAN AFFAIRS, VETERANS HEALTH ADMINISTRATION, BLACK HILLS HEALTH CARE SYSTEM And AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFGE COUNCIL 259, LOCAL 1539 AND LOCAL 2342	Case No. 24 FSIP 025

DECISION AND ORDER

The mission of the Department of Veterans Affairs (VA) is to fulfill President Lincoln's promise "To care for him who shall have borne the battle, and for his widow, and his orphan" by serving and honoring the men and women who are America's veterans. There are three main components within the VA: the Veterans Health Administration (VHA), the Veterans Benefit Administration (VBA), and the National Cemetery Administration (NCA). VA provides health care to Veterans' family members and dependents through programs administered by VHA. Pursuant to Section 1703(d) of Title 38, U.S.C., the VA may authorize a non-VA health care facility to provide necessary medical care services when such services are not feasibly available at a VA health care facility, or VA determines that such services can be obtained outside the VA more economically or more appropriately due to geographic inaccessibility. The Care in the Community (CITC) function oversees the approval and procurement of non-VA health care services for the veterans.

This case concerns a request for Panel assistance filed by the VA's Black Hills Health Care System (Agency) involving the negotiations of the Agency's decision to offer Remote Work Schedules for Registered Nurses (RNs) and Medical Support Assistants (MSAs) that work in the Care in the Community function of the Black

Hills Health Care System. The American Federation of Government Employees, Council 259 (Union) represents the two impacted locals (i.e., Local 1539 and Local 2342) and the approximate 55 impacted NPs and MSAs. The parties are governed by a National Collective Bargaining Agreement (CBA) that was enacted in 2023. This dispute was filed pursuant to §7119 of the Federal Service Labor-Management Relations Statute (the Statute). The Federal Service Impasses Panel (Panel or FSIP) asserted jurisdiction over this dispute and directed the matter to be resolved through a Written Submission procedure.

BARGAINING AND PROCEDURAL HISTORY

In September 2023, the Agency provided the Union with notice of a proposed change to Remote Work[1]. Specifically, the Agency proposed to offer Black Hills Care in the Community MSAs and RNs the option to work remotely. Prior to the proposed change, CITC MSAs and RNs had the option of working on a Telework schedule. Those that chose to telework were required to report to their assigned duty station twice a pay period. The Remote Work would remove that requirement. The only exception would be when staff would be required to report to the facility to complete mandatory training. Staff who chose not to work Remotely or Telework would continue to have a physical space to work onsite. The proposed effective date for implementing this change was October 6, 2023, pending meeting bargaining requirements.

The parties negotiated on September 22, 2023. The parties engaged on November 22, 2023 with a Mediator from the Federal Mediation and Conciliation Services (FMCS). Through negotiations and mediation, the parties were able to reach agreement on nine (9) out of ten provisions to be included in the agreement over remote work, except the issue of a sunset clause. The Mediator released the parties on December 6, 2023.

ISSUE AND PARTY PROPOSALS

The sole remaining issue in dispute is the sunset clause for the agreement. The Agency proposed the following language (the same language that is in current CBA - Article – Duration of Agreement, Section 2):

> This Agreement shall remain in full force and effect for a period of three years after its effective date. It shall be automatically renewed for one-year periods unless either party gives the other party notice of its intention to

[1] The Office of Personnel Management (OPM) defines Remote Work as a flexible work arrangement in which an employee, under a written remote work agreement, is scheduled to perform work at an alternative worksite and is not expected to perform work at an agency worksite on a regular and recurring basis..

renegotiate this Agreement no less than sixty nor more than one hundred twenty days prior to its termination date.

The Union did not offer a counter proposal, which means the agreement would only reopen when the national CBA reopens; otherwise, the terms remain in effect.

POSITION OF THE PARTIES

1. Agency

The Agency wants to include language which allows the opportunity for either party to reopen the agreement. While there is reopener language in the national CBA, that would allow either side to reopen the national CBA each year after the 3-year term expires, no such language exists for local agreements in the national CBA. As a result, unless the parties agree otherwise, local agreements stay in effect for as long as the national CBA is in effect (which could be many years beyond 3 years) until the national CBA is reopened. Without specific sunset language in the local agreement itself, there is no unilateral ability to reopen a local agreement unless the national CBA is reopened.

The Agency argued that language in this agreement that would allow either party to reopen the agreement ensures the agreement remains effective and relevant by addressing unforeseen changes. The Agency offered evidence demonstrating that the local facility (Black Hills Health Care System) has previously negotiated several MOUs with the local Union which included sunset clauses and/or reopener language. The Agency also offered evidence of several local agreements which do not have sunset or reopener language and have been in effect for many years (e.g., the agreement concerning annual leave, which remained in effect for over 20 years before either party could address concerns). In two examples provided by the Agency, the local Union requested to reopen those agreements as the terms were no longer suitable to the needs of the Union.

The Agency also argued that the agreement concerning remote work for CITC staff is a new endeavor for the CITC Department. The Agency is interested in allowing the opportunity for either side to address unforeseen issues should they arise. Finally, the Agency reminded the Panel that their posed language mirrors the duration provision of the national CBA, which should make it more agreeable to the Union.

2. Union

First, the Union argued that this matter isn't a matter of local negotiations because this matter involves not one but two locals (i.e., Local 1539 and Local 2342);

therefore, it is inherently a national matter, not a local matter. The Union argued that national agreements traditionally do not have reopeners, but instead rely on the terms of the national CBA; they only reopen when the national CBA reopens. The Union argued that the Panel should reject the Agency's argument that local agreements tend to have reopeners. Instead, the Union argued that the examples provided by the Agency were actually national agreements, which supports the Union's argument that national CBAs don't tend to have reopeners and neither should this agreement.

The terms of the national CBA would allow either party to reopen the local agreement only when the national CBA is reopened; which could be at 3 years, or, with roll over, could be several years. For background on the execution of the current national CBA terms, on December, 15, 2017, the Agency notified the Union of its intent to renegotiate the parties' national CBA, which had been in effect since March 15. 2011 (2011-CBA). The parties started the negotiation process. On August 8, 2023, the NVAC and the Agency executed the successor 2023 master CBA (2023-CBA). The terms of local agreements negotiated under the 2011-CBA, which otherwise did not have a reopener clause, remained in effect until 2023, and many continue to roll over.

The Union argued that if every local agreement reopened at 3 years, even when the national CBA is not reopened by either party, that would be a drain on both parties' resources. The Union offered no counter proposal, but asks the Panel to allow the agreement to be silent on reopening, which would mean reopener would be governed by the terms of the national CBA; the agreement opens when the national CBA reopens.

PANEL DISCUSSION AND DECISION

In sum, the Agency argued that there should be a three-year reopener because remote work for these employees is a new condition of employment. While the parties have agreed to a number of terms that should address many foreseen issues or concerns, there will inevitably be unforeseen issues that either party may want to address as the new terms are executed. Providing for a 3-year reopener would provide an opportunity for either party to raise and address concerns. If the parties simply rely on the terms of the national CBA, many years may pass before a party can raise and address concerns.

In sum, the Union argued that this is more akin to a national agreement. The Union argued that the parties do not traditionally include a reopener clause in national agreements; therefore, they should not include one here. It should be noted that while the National AFGE representative advised the Agency (via email) early in the bargaining process that the AFGE locals do not have the authority to

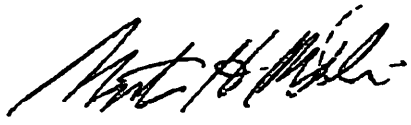
include a reopener in their agreement, no argument was made during the investigation or in the Union's written transmittal that such a provision would be in conflict with the national CBA. The Union's argument was simply based upon tradition; national agreements don't have reopeners.

The Panel found the Agency's concern about the newness of the condition of employment and concerns about addressing unforeseen issues to be a legitimate concern that the Union failed to address. The Union's argument that the parties would have to come back to the table for every local agreement in 3 years and that would be taxing on the parties' resources is a stretch. While they may have to come back to the table in 3 years or longer for this agreement, it will be because the established practice needs to be addressed. The other extreme alternative would be to allow those concerning practices to remain in place for many years (e.g., national CBA in place since 2011) before there is an opportunity to address the concern. A more balanced approach would be to allow some reasonable time to pass before either party reopens the agreement. As the parties have already agreed that 3 years before opening terms is reasonable, the Panel has determined that the parties will adopt the Agency's proposal, which allows for reopener after 3 years.

ORDER

Pursuant to the authority vested in the Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the following language to resolve the impasse:

> This Agreement shall remain in full force and effect for a period of three years after its effective date. It shall be automatically renewed for one-year periods unless either party gives the other party notice of its intention to renegotiate this Agreement no less than sixty nor more than one hundred twenty days prior to its termination date.



Martin H. Malin
FSIP Chairman

April 5, 2024