

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE ARMY
FORT LEONARD WOOD, MISSOURI

And

INTERNATIONAL ASSOCIATION OF FIRE
FIGHTERS

Case No. 24 FSIP 018

DECISION AND ORDER

This case, jointly filed by the Department of the Army, Fort Leonard Wood Missouri (Agency), and the International Association of Fire Fighters (Union), involves a provision on firefighters' "trading time" within the parties' successor collective bargaining agreement (CBA). The Agency is home to the Maneuver Support Center of Excellence, which trains and educates service members and develops doctrine and capabilities for the Training and Doctrine Command's U.S. Army Chemical, Biological, Radiological, and Nuclear School, U.S. Army Engineer School, and U.S. Army Military Police School. The Agency's Fire and Emergency Services consists of military and civilian firefighters and emergency medical technicians who oversee emergency responses within the Agency. The Union's bargaining unit consists of approximately 44 employees, including General Schedule Firefighters, Lead Firefighters, and Fire Protection Inspectors. The parties are governed by a CBA, which will expire on June 25, 2024.

BARGAINING & PROCEDURAL HISTORY

In June 2021, the parties agreed to reopen their CBA to negotiate a successor in accordance with their current CBA. By December 2023, the parties reached an agreement on all re-opened articles for their successor CBA except for a provision involving firefighters trading time in Article 12, Section 3(c)(1). The parties then engaged in two seven-hour mediation sessions with the assistance of the Federal Mediation and Conciliation Service (FMCS). Unable to reach an agreement, FMCS released the parties to the Panel. The parties then jointly filed the request for Panel assistance in this matter on December 12, 2023.

On February 8, 2024, the Panel voted to assert jurisdiction over the request for assistance and ordered the parties to a written submissions procedure to resolve the impasse. The parties provided timely statements of positions (SOPs) in accordance with the directions of the Panel's ordered procedure.

ISSUE

The only issue for the Panel to decide is what language the parties should include in their successor CBA on firefighters' trading time. As is pertinent to this issue, in 2021, Congress passed the National Defense Authorization Act for Fiscal Year 2022 (herein, "FY22 NDAA"). The FY22 NDAA included a provision authorizing eligible firefighters to trade scheduled work hours (i.e., trade time) across pay periods.¹ Prior to this authorization, firefighters could only trade time within the same pay period.

In December 2022, the Office of Personnel Management (OPM) issued a policy document to "promote uniform implementation" of firefighter time trading while OPM worked towards issuing codified regulations in the future. OPM also directed each agency with eligible firefighters to implement the new time trading provision and ensure that the OPM policy is consistent with all collective bargaining obligations. Specifically, each agency was tasked with developing a method to track the time trades to ensure proper time and attendance records.

The Department of Defense Accounting Service (DFAS) provides time and attendance services to the Agency and many other Department of Defense components through its Automated Time Attendance and Production System (ATAAPS). Following the issuance of the time trading OPM policy in December 2022, the Agency has been waiting on guidance and assistance from DFAS in implementing the time trading on ATAAPS. However, according to the Agency, DFAS has not notified agencies when they would provide guidance or update ATAAPS to track the time trades.

¹ Section 1110 of the National Defense Authorization Act for Fiscal Year 2022, Public Law 117-81, December 27, 2021, added a new subsection (h) in 5 U.S.C. 5542 for "qualified trade-in-time arrangements." Prior to this enactment, firefighters could trade time only within the same pay period to avoid the substituting firefighter being paid for working overtime. Section 5542(h) now provides that the time worked by the substituting firefighter is considered and paid as time worked by the excused firefighter, thereby facilitating, albeit not requiring, the trading of time across pay periods.

POSITIONS OF THE PARTIES

Agency's Position

The Agency provided an updated proposal with its SOP as its last best offer to the Panel. Previously, the Agency proposed the parties keep the language on trading time from their current CBA, which only permitted trading within the same pay period. However, the Agency's last best offer to the Panel now acknowledges the expanded practice of trading time in accordance with 5 U.S.C. § 5542(h). The Staff notes that as the Agency's proposal does not raise any matters outside those that the parties have already negotiated and mediated, the proposal is within the Panel's jurisdiction and proper consideration.²

The Agency's updated proposal is as follows:

It is agreed that the common practice of trading time between Firefighters to substitute for one another on a regularly scheduled tour of duty (or some part thereof) is permitted if there is no effect on hours of work. Trade time practices shall be in accordance with Title 5, United States Code. Section 5542(h) and the Office of Personnel Management (OPM) issued a policy on December 14, 2022. The parties understand that the Agency is waiting on DoD and DA implementing guidance, and currently, there is no system in place to capture trade time in the Automated Time Attendance and Production System (ATAAPS), a web-based system that allows DoD employees to manage their time and leave online and the official system of record for all DA payroll tracking. Until DoD and DA implementing guidance is issued, the parties agree that Trade Time should remain the status quo in accordance with the current collective bargaining agreement. Once DoD and DA implementing guidance is issued, the parties agree to open discussion on Trade Time to finalize mutually agreed language in compliance with any subsequently issued DoD and DA guidance.

² In accordance with *Patent Office Professional Association vs. Department of Commerce, Patent and Trademark Office*, 26 F3d 1148 (1994), the Panel may only resolve matters that the parties have negotiated and mediated.

The Agency takes the position that while it acknowledges that current trade time practices should be in accordance with 5 U.S.C. § 5542(h), without guidance from DFAS and an update to ATAAPS, implementing the new time trading policy would risk time and attendance fraud. The Agency claims that this risk is not one it is willing to assume. Accordingly, the Agency proposes the parties continue their current practice of only permitting time trading within the same pay period until DFAS updates ATAAPS.

Union's Position

The Union takes the position that the parties' CBA should properly reflect the current time trading policy. While the Union acknowledges that the Agency is waiting on DFAS, the Union believes it is unfair to continue to prevent its bargaining unit from trading time as afforded under the FY22 NDAA.

The Union's proposal is as follows:

The Parties agree that firefighters may substitute for one another on regularly scheduled tours of duty or a part thereof. This practice is commonly referred to as "trading time." Trade time practices shall be in accordance with 5 U.S.C. 5542(h) OPM Policy Regarding the Firefighter Trading Time Authority."

PANEL DISCUSSION & DECISION

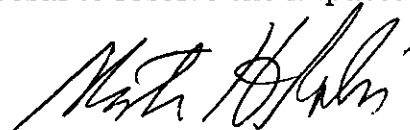
Here, the parties agree that 5 U.S.C. § 5542(h) sets forth the appropriate time trading provisions. However, they cannot agree on when those provisions should be available for employees. We ultimately find that the Union's proposal for the parties to abide by 5 U.S.C. § 5542(h) without any further delay is appropriate.

Unfortunately, both parties submitted SOPs containing unsupported assertions. Consequently, the Panel was presented with a less-than-ideal record from which we were to resolve this matter. The Union claimed, without providing any evidence, that 5 U.S.C. § 5542(h) has already been implemented within other Department of Defense components. Indeed, the Union failed to even specify which components have implemented trading time across pay periods. The Agency claimed, without providing any evidence, that it has requested DFAS update ATAAPS to implement 5 U.S.C. § 5542(h) and DFAS has failed to do so. Without such evidence, the parties' SOPs are of little assistance to us in our assessment of the merits of the parties' proposals.

Nevertheless, the law is the law. We are left with the parties' agreement that 5 U.S.C. § 5542(h) should apply and guidance from OPM, which is a clear directive for agencies to implement 5 U.S.C. § 5542(h). Given that the Agency has been on notice of the expanded time trading since at least December 2021, we find further delay in complying with 5 U.S.C. § 5542(h) and the OPM directive is inappropriate. Accordingly, we order the parties to adopt the Union's proposal.

ORDER

Pursuant to the authority vested in the Panel under 5 U.S.C. § 7119, the Panel hereby orders the parties to adopt the Union's proposal to resolve the impasse.

A handwritten signature in black ink, appearing to read "Martin H. Malin". The signature is fluid and cursive, with a prominent initial "M".

Martin H. Malin
FSIP Chairman

April 15, 2024