

In the Matter of

DEPARTMENT OF VETERANS AFFAIRS
SAMUEL S. STRATTON VETERANS
AFFAIRS MEDICAL CENTER
ALBANY, NEW YORK

and

LOCAL 200UNITED, SERVICE
EMPLOYEES INTERNATIONAL UNION

Case Nos. 14 FSIP 22 & 23.

ARBITRATOR'S OPINION AND DECISION

The Department of Veterans Affairs (VA), Samuel S. Stratton Veterans Affairs Medical Center, Albany, New York (VAMC or Employer) and Local 200United, Service Employees International Union (SEIU or Union) each filed separate requests for assistance with the Federal Service Impasses Panel (Panel), under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), to consider the same negotiations impasse over the parties' successor collective bargaining agreement (CBA).

Following an investigation of the requests, which involve Article 29: Stewards-Functions, §§ 29.3 and 29.4, the Panel directed the parties to submit their dispute to the undersigned, Panel Member Barbara B. Franklin, for a mediation-arbitration at the Panel's offices in Washington, D.C. The parties were informed that if a complete settlement were not reached during mediation, I would issue a binding decision to resolve the dispute. On April 7, 2014, I conducted a mediation-arbitration proceeding with representatives of the parties. Settlement efforts during the mediation phase were unsuccessful. Therefore, I am required to issue a final and binding decision resolving the parties' dispute. In reaching this decision, I have considered the entire record in this matter, including the parties' last best offers (LBOs) and their pre- and post-hearing submissions.

BACKGROUND

The VA's mission 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." Since 1951, the VAMC has served veterans in 22 counties of upstate New York, western Massachusetts and Vermont. The Union is comprised of many bargaining units in a number of states. Among others, it represents employees who work in VA hospitals, nursing and assisted living homes, as well as employees at Syracuse University. According to the Employer's figures, which the Union did not dispute, at the time of the proceeding there were approximately 615 bargaining unit employees (BUEs) at the VAMC. The parties' initial CBA took effect in October 2004 but has been extended in 3-year increments since its original 2007 expiration date.

ISSUES AT IMPASSE

The parties essentially disagree over: (1) how much official time, if any, each of the Union's officers should receive under the successor CBA (Article 29, § 29.4); and (2) under Article 29.3 of the successor CBA, whether officers or stewards should continue to receive "authorized absence for consultation" (AA time) and, if so, how much.^{1/} They also disagree as to whether Article 29.3 should reference Article 2 of the agreed-upon terms for the successor CBA^{2/}; and when notice must be given when the Chairperson delegates official time to another Union official.

1/ Currently, the parties' CBA grants both the Union's Chairperson and Assistant Chairperson 4 hours per day, and its Chief Steward 2 hours per day, of official time "to conduct Union business"; the equivalent of § 29.3 affords officers and stewards a "reasonable amount" of AA time to engage in "areas of mutual concern" such as those "relating to pay, working conditions, work schedules, employee grievance procedure, performance rating, and adverse action appeals, etc."

2/ Article 2, titled "Consultation, Negotiation and Duration, states among other matters:

(d) As provided in 5 USC 7131, union officials and stewards will be allowed official union time (per existing bank of official time) to investigate and process grievances; meet with careline/service line supervisors and managers regarding personnel policies and practices governing general working conditions.

POSITIONS OF THE PARTIES

1. The Employer's Position

Insofar as the parties disagree on the wording of Articles 29.3 and 29.4, the Employer's final offer is as follows:

29.3 Authorized Absence for Consultation. The Employer will afford officers and Stewards a reasonable amount of on-duty time to be considered as authorized absence to carry out Union-Management consultations in accordance with **Article 2 and Article 29.4.**

29.4 The Chairperson will be authorized 30 hours per week official time for representational duties. Additional official time of 20 hours per week for all other union officials and stewards is authorized and **will be designated by the Chairperson at least two weeks in advance.** In the absence of the Chairperson for Annual Leave and National Partnership, the Chairperson will designate who will use the Chairperson's hours as long as the Chairperson provides a minimum of two weeks' notice prior to the Chairperson's absence. Above hours and times will not be denied except in patient care emergencies, which take precedence over designated official time. [Language in dispute is in bold-face type.]

The Employer is willing to increase the official time allotment for the Chairperson to six hours per day but is adamant that the Chairperson should not receive more than that amount, excluding official time that is statutorily required. Total contractual official time - as contrasted with statutory time - should not exceed 2,600 hours. According to the Employer, effective Labor/Management discussions would be negatively affected if only one union official has the bulk of official time. In particular, allocating 32 hours of official time per week to the Chairperson does not break down evenly on a daily basis and would create tracking issues. Although the other local union, which represents the nurses at the VAMC, has a chairperson on official time for up to 32 hours per week, that chairperson was the union's only representative at the time that agreement was entered into. In addition, that individual is not permitted to use official time when performing weekend work and, under that unit's new CBA, the chairperson's official time will be reduced continually through FY 2016.

With regard to the term "Authorized Absence" in Article 29.3, all official time taken for whatever purpose is coded as "AA" in the VAMC time and attendance system. The Employer considers it important to reference both Article 2 and Article 29.4 in Article 29.3 in order to understand the terms of that provision in the context of other agreed-upon provisions of the successor CBA.

During the mediation phase of the proceeding, the Employer stated that, because of workload considerations, supervisors would need at least two weeks advance notice if the Chairperson designated other Union officials or stewards to use the additional 20 hours per week allocated to those individuals or if the Chairperson designated someone to use the Chairperson's authorized hours during his/her absence for annual leave or National Partnership activities.

2. The Union's Position

The relevant portions of the Union's final offer regarding Article 29.3 and 29.4 are as follows:

29.3 Authorized Absence for Consultation. The Employer will afford officers and Steward a reasonable amount of on-duty time to be considered as authorized absence to carry out Union-Management consultations in accordance with Article 29.4.

29.4 The Chairperson will be authorized 32 hours per week official time for representational duties. Additional official time of 20 hours per week for all other union officials and stewards is authorized and will be designated by the Chairperson when possible at least two weeks in advance. In the absence of the Chairperson for Annual Leave and National Partnership, the Chairperson will designate who will use the Chairperson's hours as long as the Chairperson provides a minimum of two weeks, when possible notice prior to the Chairperson's absence. Above hours and times will not be denied except in patient care emergencies, which take precedence over designated official time. [Language in dispute is in bold-face type.]

The Union cites the Parties' Master Agreement in contending that Article VII of that agreement permits local union representatives "a reasonable amount of official time to perform representational functions and functions related to contract administration." The Union also points out that Article VII

states that a union representative wishing to use official time will notify his/her immediate supervisor and advise the supervisor of the general purpose of the request. Further, the Master Agreement and Federal regulations make clear that Union representatives participating in Partnership activities and labor-management relations committee meetings are considered to be on duty status and not on official time. Thus, if the Chairperson is allocated 32 hours, as the Union proposes, statutory and Partnership duties will bring the total to 40 or more hours. Finally, the Union notes that the amount of hours authorized under the agreement covering the nurses at the VMAC is equivalent to 1.45 full-time equivalent positions.

CONCLUSIONS

Having carefully considered the entire record in this case, including the evidence and arguments presented by the parties during the mediation-arbitration proceeding, I make the following conclusions.

1. Total Number of Contractual Official Time Hours

During the mediation phase of the proceeding, both parties appeared to agree that the total number of hours authorized under Article 29.4 should be 2,600. For example, when the Union originally argued that the Chairperson should receive official time on a full-time basis, it stated that the Vice-Chairperson should be authorized only 2 hours per day of official time, so as to maintain the total of 2600 hours per year set forth in the current CBA and as proposed by the Employer.^{3/} The Employer noted that 2,600 hours is slightly more than the amount (2,550 hours) suggested by its National Office guidelines, but that it would agree to this amount because it reflects the official time authorized under the current CBA. In light of the parties' apparent agreement, this decision will maintain a cap of 2,600 hours of official time authorized under Article 29.4.

^{3/} The Union also claimed that, in addition to the hours specifically authorized under Article 29.4, officers and stewards may be granted "a reasonable amount" of official time under Article 29.3. However, in its final offer, the Union does not seek to clarify the language of Article 29.3 in this regard.

2. Allocation of Official Time among Union Officers

The Employer's final offer authorizes 30 hours of official time per week for the Chairperson; the Union's offer authorizes 32 hours. Both offers would grant a total of 20 hours of official time per week for all other officials and stewards. Thus, the offers vary by only two hours per week of official time for the Chairperson.

In order to maintain a cap of 2,600 hours per year - or 50 hours per week - as discussed above, I will adopt the Employer's proposal. The Employer claims that this amount of time is easier to break down on a daily basis and therefore to track. As the Union suggests, removing two hours from the Chairperson's allocation will probably have a negligible effect, in light of the amount of statutory official time that individual is likely to take over the course of a year. Although 30 hours may be less than the amount currently authorized by the CBA covering the nurses' unit, the record is not clear whether the chairperson of that unit takes the full authorized amount on a regular basis and whether the amount will be reduced in the future, as claimed by the Employer.

3. Article 29.3

The Employer wants to reference both Article 2 and Article 29.4 in Article 29.3, so that bargaining unit employees and their supervisors will understand that all three should be read together. The Union would omit Article 2 as duplicative and unnecessary. As the parties have agreed to Article 2 and it has some relevance to the material in Article 29.3, I see no reason why it should not be referred to in that provision. Accordingly, I will impose the additional language.

4. Notice Provisions of Article 29.4

The Employer wants to require, in all circumstances, two weeks advance notice when: the Chairperson designates other Union officials to use a portion of the 20 hours per week of official time allotted to them; or the Chairperson designates another Union official to use the Chairperson's hours while the Chairperson is on annual leave or leave for National Partnership activities.

I conclude that the Employer's proposal would be unworkable. Although the Chairperson may know in most circumstances well in advance that the services of another

official will be required or that the Chairperson will need to take annual or statutory leave, this will not always be the case. The need for employee representation can arise on an emergency basis and those emergencies often cannot wait for two weeks to be addressed. Similarly, the Chairperson will not always know two weeks in advance that he/she needs to take annual leave that will necessitate finding a Union substitute to serve in his/her absence. The Union's final offer, which requires two weeks' notice "when possible," is more reasonable and more attuned to workplace needs. Moreover, it appears to comport more closely with the procedure for requesting time set forth in Article 29.3. Accordingly, I will impose the Union's wording in this regard.

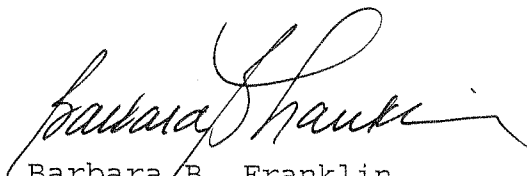
DECISION

The parties shall adopt the following wording to resolve their impasse:

29.3 Authorized Absence for Consultation. The Employer will afford officers and Stewards a reasonable amount of on-duty time to be considered as authorized absence to carry out Union-Management consultations in accordance with Article 2 and Article 29.4. Including, but not limited to, areas of mutual concern relating to pay, working conditions, work schedules, employee grievance procedure, performance rating, and adverse action appeals, as well as the Employer's policy pertaining to them. Every effort will be made in the interest of effective Union-Management relations to expeditiously complete these consultations. However, in the event such consultations and/or Union-Management functions require an inordinate amount of time away from the normal job assignments of those involved, then such consultations and activities will be conducted after regular duty hours. Stewards will request permission from their immediate supervisor when they wish to leave their assigned areas for the purpose of performing Union-Management duties. Supervisors will give prompt consideration to the requests of Stewards and/or Officers and release them at the earliest possible time consistent with work load and patient-care requirements. Before releasing Officers and Stewards the supervisor may inquire as to the location of the meeting, the approximate length of the meeting, and the general purpose of the meeting. If this

information is not given permission may be denied. If the SEIU believes that union time under this Article is being unreasonably denied it will be brought to the attention of the Human Resources Manager. Stewards will also arrange to meet with the employee they represent through the employee's supervisor.

29.4 The Chairperson will be authorized 30 hours per week official time for representational duties. Additional official time of 20 hours per week for all other union officials and stewards is authorized and will be designated by the Chairperson when possible at least two weeks in advance. In the absence of the Chairperson for Annual Leave and National Partnership, the Chairperson will designate who will use the Chairperson's hours as long as the Chairperson provides, when possible, a minimum of two weeks' notice prior to the Chairperson's absence. Above hours and times will not be denied except in patient care emergencies, which take precedence over designated official time.



Barbara B. Franklin
Arbitrator

April 30, 2014
Washington, D.C.