

## United States of America

## BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE AIR FORCE  
LUKE AIR FORCE BASE  
LUKE AFB, ARIZONA

and

LOCAL 1547, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 14 FSIP 40

DECISION AND ORDER

Local 1547, American Federation of Government Employees, AFL-CIO (Union or Local 1547) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse, under 5 U.S.C. § 7119 of the Federal Service Labor-Management Relations Statute (Statute), between it and the Department of the Air Force, Luke Air Force Base, Luke AFB, Arizona (Employer or Luke AFB).

Following an investigation of the request, which concerns a dispute over the implementation of the Department of Defense (DOD or Department) Financial Management Certification Program, the Panel determined that the matter should be resolved through the issuance of an Order to Show Cause (OSC). In this regard, the parties were directed to show cause why the Panel should not impose the Memorandum of Understanding (MOU) proposed by the Union on January 9, 2014, (January 9 MOU) to resolve their impasse.<sup>1/</sup> The parties were instructed to respond to the OSC by submitting statements of position supported by evidence and argument, and alternative proposals, if any, to the provisions contained in the January 9 MOU, and to explain any differences in wording between their alternative proposals and the January 9 MOU. They were advised further that after considering the entire record, the Panel would issue a binding decision to resolve the dispute. In response, the Union resubmitted its January 9 MOU

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<sup>1/</sup> See Attachment A for the text of the January 9 MOU.

while the Employer proposed an alternative MOU on May 1, 2014, (May 1 MOU).<sup>2/</sup> The Panel has now considered the entire record.

#### BACKGROUND

Luke AFB is an active-duty base approximately 15 miles west of Phoenix, Arizona. Its host command is the 56<sup>th</sup> Fighter Wing (56 FW) which is part of the Air Force's Air Education and Training Command. The primary mission of the 56 FW is to train the Air Force's F-16 pilots. In addition to pilots the 56 FW trains more than 700 maintenance technicians each year and is responsible for repairing and maintaining the 170 F-16s assigned to Luke AFB. The Union represents approximately 680 non-professional employees who work in both Wage Grade and General Schedule positions. The parties' current collective bargaining agreement (CBA) expired on October 2, 2000. Although they are in the process of negotiating its successor, the parties will continue to follow all but the permissive terms and conditions of the 2000 CBA until a new one is executed.

Public Law (PL) 112-81 was passed in 2012 giving the Secretary of Defense authority to prescribe professional certification and credentialing standards for its Financial Management workforce. Consistent with that authority, DOD issued Department of Defense Instruction 1300.26 (DODI 1300.26), "Operation of the DOD Financial Management Certification Program," on November 2, 2013, to "establish policy, assign responsibilities, and prescribe procedures for implementation of DOD's Financial Management (FM) Certification Program" for FM employees.<sup>3/</sup> According to an April 2013 PowerPoint titled "Answering your FM Certification Program Questions," certification will ensure that the Department's FM workforce is adequately trained in "audit readiness and decision support/analysis" and sufficiently focused on "career broadening" and "leadership" skills to adapt to future FM requirements.

The Employer notified the Union on May 17, 2013, that all

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<sup>2/</sup> See Attachment B for the text of the Employer's Alternative May 1 MOU.

<sup>3/</sup> Employees in FM positions "perform, supervise or manage work of a fiscal, financial management, accounting, auditing, cost or budgetary nature." DODI 1300.26, Section 3. Policy at 3.b.(2). In the civilian workforce, FM employees are classified in the 05XX series.

25 to 30 FM bargaining unit employees at Luke AFB would be required to participate in online training to become certified and credentialed at the grade level commensurate with their responsibilities. The parties exchanged two sets of proposals prior to meeting with the Federal Mediation and Conciliation Service (FMCS) on October 31, 2013, and January 6, 2014. By the end of the second day, they verbally concurred that they had reached conceptual agreement on an MOU consisting of eight sections. The mediator asked the Union to draft and sign an MOU reflecting the parties' agreements and to send it to the Employer for signature. The Union drafted, signed and sent the January 9 MOU to the Employer. Instead of signing it, the Employer responded with an MOU of its own agreeing only to the Union's wording on Sections 5 and 8. That MOU is identical to the May 1 MOU the Employer submitted in response to the Panel's OSC.

#### ISSUES AT IMPASSE

The parties essentially disagree over the following: (1) the extent to which employees can be required to study and/or train (S&T) for FM certification outside of their normal duty hours, and whether employee logs of requested S&T time must receive supervisory validation (Section 1); (2) the extent to which employees should have to divulge their protected personal information (PPI) because of FM certification (Section 2); (3) whether FM certification is a "test" or "course based" program (Section 3); (4) the conditions under which waivers of the certification requirement may be obtained (Section 4); (5) whether affected employees should be provided copies of the final MOU within 15 calendar days, or 15 duty days, after it has been signed by the parties (Section 6); and (6) the circumstances, if any, under which either party may reopen their MOU once it becomes final (Section 7).

#### POSITIONS OF THE PARTIES

##### 1. The Union's Position

The Union's overarching argument is that the Panel should impose its entire January 9 MOU because it accurately reflects the agreements reached by the parties at mediation. More specifically, its wording in Section 1(a), which obligates "[e]mployees and supervisors [to] work together to develop a training schedule that allows for the employee to meet the requirements of the FM Certification program during normal duty hours," would ensure that the time needed for the training is

scheduled. Moreover, it is consistent with the parties' agreement in the introductory sentence to Section 1 "that employees will not be required to study and/or train for the FM certification outside of their normal duty hours." The Employer's proposal requiring employees and supervisors to develop an S&T schedule that grants duty time for FM coursework "within workload and funding constraints," is inconsistent with that sentence. The Union's proposals in Sections 1(b) and 1(c), requiring employees to log requests for S&T time regardless of whether they are granted or denied, would create records that can later be used to substantiate that employees were not given sufficient duty time to complete their coursework in a timely manner, their requests for more time were denied, and/or their supervisors "suffered or permitted," if not ordered them, to work overtime on their FM certifications.

The Union's proposal in Section 2 that employees not be required to "use any of their privacy act protected information for FM Certification purposes" is based on its belief that PPI "is not needed for these processes." Concerning the nature of the FM course, during bargaining the Employer described the certification program as course-based and gave the Union copies of FM training materials that contain the same assurances. Therefore, the Union's description of FM certification in Section 3 as course-based with "no testing required" is simply wording that "confirm[s] the discussions that were made at the bargaining table." As to its proposal in Section 4, the Union understands that DODI 1300.26 gives employees 2 years to obtain certification and an opportunity to "submit a [1]-year waiver if circumstances inhibit" completion within that time. It fears, however, that "schedule delays associated with denials and/or interference for time needed to study or train for the FM certification" will preclude employees from completing their coursework on time. This is why, instead of giving the FM Component Certification Authority (CCA) sole discretion to decide whether to grant or deny a waiver, as proposed by the Employer, Section 4 of the January 9 MOU requires that, when requested, the "[1]-year waiver will be approved." The Union's proposal in Section 6 that the Employer distribute the final MOU to affected employees within 15 calendar days after it has been signed by the parties is reasonable. In addition, "throughout negotiations, the agency's description of the FM process has been vague" with "no definite timetable" on how long it will take to attain or maintain certification, or under what circumstances employees can lose their jobs for failing to obtain it. For these reasons its wording in Section 7, permitting either party to submit proposals as the FM

certification process unfolds regarding any subject matter not specifically addressed in the final MOU, should be adopted.

## 2. The Employer's Position

The Employer agrees that the Union drafted the January 9 MOU "at the request of the FMCS" with its concurrence. But because it "fails to consider Management's position[s]" in six of its eight sections, the Union's MOU "does not accurately capture the verbal understandings that were reached" at mediation. Although the Employer agrees in Section 1 that "employees will not be required to study and/or train for the FM certification outside of their normal duty hours," it "specifically disagrees with any agreement requiring the employee to study and/or [train] only during duty hours." Prohibiting employees from engaging in S&T activities after work would deprive them of the "maximum options available" to complete the requirement within the allotted timeframe. Moreover, "requiring comp-time or overtime for any time used outside of normal duty hours is contrary to the intent of the program" and "could violate federal labor laws." It also would infringe on the Employer's reserved "right to schedule duty time for completion of the training subject to supervisory approval based on mission requirements." Thus, the Employer proposes in Section 1(a) that supervisors and employees work together to develop an S&T schedule that would give employees time to complete the coursework during duty hours "within workload and funding constraints." Similarly, the Employer supports the Union's Section 1(b) admonition to employees to log their S&T time, including any denial of requests for that time. It would require, however, that every item logged in by an employee be validated by his/her supervisor's signature to ensure management "oversight and concurrence."

The Employer is sympathetic to employees' interest in having their privacy protected and, therefore, can assure them that, when taking courses on the "FM Certification website," they will not have to divulge PPI. Since it "has no standing [to] direct[] third-party organizations [concerning] their policies and procedures," and employees themselves may divulge PPI when they apply for such things as "temporary professional education, off-duty education courses, and complementary certification programs," it would be impossible for the Employer to promise that no PPI will be used or divulged. Consequently, it proposes in Section 2 that, when using the Defense Civilian Personnel Database (DCPDS) and the DOD Learning Management System (LMS) to record employees' certification requirements and

course progress, the Employer will do so in accordance with the Privacy Act. The Employer's wording in Section 3 acknowledges that "FM Certification is a course-based certification and no final certification test to earn the certification level is required." This is warranted because online courses typically include ungraded "tests" to ensure student comprehension on each subject matter covered. The Union's proposal that "no testing [be] required" is "impractical."

In Section 4 the Employer proposes that employees be allowed to request a 1-year time waiver when "circumstances inhibit" them from completing certification within 2 years, but it gives the CCA sole discretion to decide whether to approve or disapprove such requests. This would reserve to management "the right to deny waivers" when failure to complete the coursework is due to an employee's "unwillingness to participate" or for other "employee-controlled" reasons and "is in accordance with DOD Instruction 1300.26." Its wording in Section 6 confirms that the Employer does not agree to waive its statutory right to agency head review. Once that process is concluded, however, it is willing to distribute the agreement to affected employees within 15 duty, rather than calendar, days. Lastly, in Section 7 the Employer proposes that once the MOU becomes final it should not be reopened unless it makes changes to FM certification that trigger new bargaining rights.

#### CONCLUSIONS

Having carefully considered the parties' responses to the OSC, in our view neither side has shown cause why the MOUs they propose should be adopted in their entirety. Accordingly, we shall impose a modified version of the January 9 MOU to resolve the impasse that balances the parties' interests by, among other things, incorporating wording from the DODI 1300.26, the May 1 MOU, and previous bargaining proposals or positions that are part of the record.

In this regard, in addition to the introductory paragraph, we shall order the adoption of the first sentence of Section 1, which is also included in the Employer's May 1 MOU. Section 1(a) of the January 9 MOU will be modified, however, by adding the phrase "unless workload constraints require otherwise" at the end of the sentence. This is necessary to preserve management's statutory right to assign work to employees beyond their normal duty hours. The language in Section 1(b) and (c) is combined to make clear that employees have the discretion to maintain logs of FM certification S&T time and that, if the

option is exercised, they must obtain their supervisors' signatures on each item to validate the log entries. Doing so will prevent disagreements over whether an employee's request to perform certification-related activities during regular work hours was denied. Given the Employer's assurances that where PPI is involved it will act "in accordance with Privacy Act requirements," our wording in Section 2 shields employees from submitting, and prohibits the Employer from using PPI, "except in accordance with the Privacy Act of 1974, 5 U.S. C. § 552a." Regarding Section 3, although the certification program is course-based, because online training is likely to involve testing of an employee's mastery of the material before moving on to successive modules, we are persuaded that the Employer's proposal should be adopted.

While there is no dispute between the parties over the starting date referenced in the first sentence of Section 4 of the January 9 MOU triggering the 2 years that FM employees will have to obtain certification, the date has already passed. Consequently, the commencement of FM certification will be changed to "the first workday after Agency Head approval of this Memorandum." Our wording in Section 4(a), allowing employees to submit 1-year waiver requests if they are unable to complete certification in 2 years, and the first sentence in Section 4(b), informing employees that such requests should be "accompanied by supporting rationale" and acknowledging that the CCA has authority to approve or disapprove time waivers in "1-year increments," is taken directly from DODI 1300.26.<sup>4/</sup> The second sentence of Section 4(b), stating that waiver requests will "normally be approved" if the employee's supporting rationale shows that "operational requirements" or "employee circumstances inhibited" them from obtaining certification in 2 years, is based on a previous counterproposal submitted by the Employer. The wording proposed by the Union in the January 9 MOU, on the other hand, could lead to disputes unless the conditions for receiving waivers are clearly specified. In Section 6, we concur with the Employer that the final agreement should not be distributed to affected employees until conclusion of the agency head approval process under 5 U.S.C § 7114(c), and with the Union that the Employer should do so within 15 calendar days thereafter. Finally, in Section 7 a compromise will be imposed that makes the MOU final and binding for 3 years after which either party may propose changes to the implementation of the FM Certification Program, regardless of whether the subject

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<sup>4/</sup> See DODI 1300.26 at Enclosure 3: Procedures at Section 6.a.(1)(a) - (c).

matter is covered in the agreement. This timeframe is consistent with Section 8, where the parties have agreed that the Employer will provide the Union with quarterly reports of employees' progress in meeting certification requirements for the initial 3-year period. Moreover, given how extensive the parties' negotiations have been with respect to FM certification, we are not persuaded that the wording proposed by the Union in the January 9 MOU is necessary.

#### ORDER

Pursuant to the authority vested in it 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 pursuant to 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 following wording:

#### **MEMORANDUM OF AGREEMENT BETWEEN LUKE AFB AND AFGE, LOCAL 1547**

The American Federation of Government Employees, Local 1547 (Union) and Luke Air Force Base (Employer), hereby enter into this Memorandum of Understanding to address the FM Certification requirements for any bargaining unit employees filling a 05XX position assigned to Luke AFB. Through this agreement the parties hereby agree to the following.

1. It is understood and agreed that employees will not be required to study and/or train for the FM certification outside of their normal duty hours unless workload constraints dictate otherwise.
  - a. Employees and supervisors will work together to develop a training schedule that allows for the employee to meet the requirements of the FM Certification Program during normal duty hours.
  - b. If an employee decides to log his/her FM certification study and training time, including any supervisory denials of requests to perform such work during normal duty hours, the employee must obtain supervisor signatures on each item logged to validate the log entries.




2. It is understood and agreed that employees will not be required to submit, and the Employer will not be allowed to use, employees' protected personal information except in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a.
3. It is understood and agreed that the FM Certification Program is a course-based certification and no final certification test to earn the certification level is required.
4. Employees will have 2 years to complete the FM Certification requirements beginning the first workday after Agency Head approval of this Memorandum of Understanding, or their date of hire after that date.
  - a. Employees may submit a 1-year waiver if they are unable to complete the certification course requirements within the 2-year timeframe.
  - b. It is understood and agreed that the Component Certification Authority (CCA) is authorized to approve or disapprove time waivers for certification completion in 1-year increments. It is also understood and agreed that requests for time waivers will normally be approved if accompanied by supporting rationale that shows that operational requirements or employee circumstances inhibited the employee from completing the certification course requirements within the 2-year timeframe.
5. It is understood and agreed that this certification does not change the employee's ratable job requirements.
6. All bargaining unit employees that are required to attain or maintain the FM certification will be provided with a copy of this Memorandum of Understanding. This will be completed within 15 calendar days of the conclusion of the agency head approval process under 5 U.S.C § 7114(c) for current employees and 15 calendar days of hire for employees hired later.
7. This agreement will constitute the complete and final agreement between the parties related to the

implementation of the DoD FM Certification Program for 3 years. At the end of 3 years, either party may provide proposals regarding any subject matter related to the implementation of FM certification, regardless of whether it is specifically covered in this agreement.

8. For the initial three year period the employer agrees to provide the Union with quarterly reports (Oct., Jan., Apr., July) of the employees' progress in the FM certification.

By direction of the Panel.



H. Joseph Schimansky  
Executive Director

July 15, 2014  
Washington, D.C.

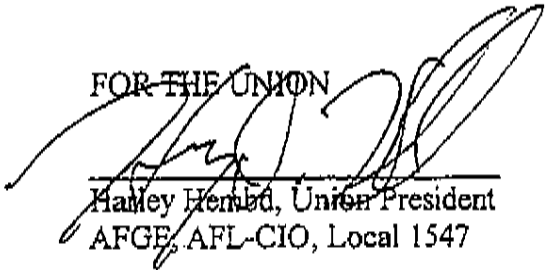
## ATTACHMENT A

## MEMORANDUM OF UNDERSTANDING

The American Federation of Government Employees, Local 1547 (Union) and Luke Air Force Base (Employer), hereby enter into this Memorandum of Understanding to address the FM Certification requirements for any bargaining unit employees filling a 05XX position assigned to Luke AFB. Through this agreement the parties hereby agree to the following.

1. It is understood and agreed that employees will not be required to study and/or train for the FM certification outside of their normal duty hours.
  - a. Employees and supervisors will work together to develop a training schedule that allows for the employee to meet the requirements of the FM Certification program during normal duty hours.
  - b. Employees should log their FM Certification study and training time.
  - c. Employees should log all denials of study and training time for the FM Certification.
2. It is understood and agreed that employees will not be required to use any of their privacy act protected information for the FM Certification processes.
3. It is understood and agreed that the FM Certification program is a course-based certification and there is no testing required.
4. Employees will have two years to complete the FM Certification requirements beginning on 1 July 2014.
  - a. Employees may submit a one-year waiver if circumstances inhibit the employee from completing the certification course requirements within the two-year timeframe. This one-year waiver will be approved.
5. It is understood and agreed that this certification does not change the employee's ratable job requirements.
6. All bargaining unit employees that are required to attain or maintain the FM Certification will be provided with a copy of the final agreement reached by the parties. This will be completed within 15 days of the signature of this agreement for current employees and 15 days of hire for employees hired later.
7. Either party may provide proposals at any time for subject matter not specifically addressed in the final agreement reached by the parties.
8. For the initial three year period the employer agrees to provide the Union with quarterly reports (Oct., Jan., Apr., July) of the employees progress in the FM certification.

FOR THE UNION



Harley Hembd, Union President  
AFGE, AFL-CIO, Local 1547

9 JAN 14

Date

FOR THE EMPLOYER

SCOTT E. SMITH, Major, USAF  
Commander, 56 CPTS

Date

## ATTACHMENT B

MANAGEMENTS PROPOSAL

1. It is understood and agreed that employees will not be required to study and/or train for the FM certification outside of their normal duty hours.
  - a. Employees and supervisors will work together to develop a training schedule that allows for the employee reasonable duty time to complete the Certification Program coursework and sustain certification within workload and funding constraints.
  - b. Employees should log their FM Certification study and training time, to include any denials of study or training time. If an employee maintains a log, the employee must obtain supervisor signatures on each item logged to validate the log entries.
2. It is understood and agreed that employees will not be required to use any of their privacy act protected information for the FM Certification website
3. It is understood and agreed that the FM Certification program is a course-based certification and no final certification test to earn the certification level is required.
4. Employees will have two years to complete the FM Certification requirements beginning on 1 July 2014, or their date of hire after that date.
  - a. Employees may submit a one-year waiver if circumstances inhibit the employee from completing the certification course requirements within the two-year timeframe.
  - b. Waiver requests will be approved/disapproved by the Component Certification Authority (CCA). It should be expected that the quarterly reports referred to in item 8, and any employee logs maintained under item 1.b. and/or c., may be used to view the circumstances for the waiver.
5. It is understood and agreed that this certification does not change the employee's ratable job requirements.
6. All bargaining unit employees that are required to attain or maintain the FM Certification will be provided with a copy of the final agreement reached by the parties. This will be completed within 15 duty days after agreement has Agency Head approval to current employees and 15 duty days of hire for employees hired later.
7. This agreement constitutes the complete and final agreement between both parties related to the implementation of the DoD FM Certification Program. Management will notify the Union if changes are made to the program that requires new bargaining requirements.
8. For the initial three year period the employer agrees to provide the Union with quarterly reports (Oct., Jan., Apr., July) of the employee's progress in the FM certification.