

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE ARMY  
WILLIAM BEAUMONT ARMY MEDICAL  
CENTER  
EL PASO, TEXAS

and

LOCAL 2516, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 11 FSIP 36

DECISION AND ORDER

Local 2516, American Federation of Government Employees, AFL-CIO (Union) 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 Army, William Beaumont Army Medical Center, El Paso, Texas (Employer or WBAMC).

Following an investigation of the request, which concerns the implementation of mandatory seasonal influenza immunization for health care personnel (HCP), the Panel determined that the matter should be resolved through the issuance of an *Order to Show Cause* (OSC). In this regard, the Union was directed to show cause why the Panel should not impose: (1) the Employer's final offers, contained in its September 27, 2010, "Management Proposal" (September 27 Management Proposal), to settle the parties' disputes over Section 5 (definition of "direct health care provider"), Section 7 (religious exemptions) and Section 8 (job series for "direct health care providers"); and (2) the Employer's proposed Memorandum of Agreement, dated February 8, 2011 (February 8 MOA), titled "Negotiations for Mandatory Seasonal Influenza Immunization for Civilian Health Care Personnel," to memorialize the tentative agreements the parties had reached on 12 out of 15 other matters during their first mediation session with the Federal Mediation and Conciliation

Service (FMCS).

Under this procedure, as part of its response to the OSC, the Union was invited to propose alternative wording to Sections 5, 7 and 8 of the September 27 Management Proposal for the Panel's consideration, and the Employer was directed to submit a rebuttal to the Union's position. In rendering its decision, the Panel has now considered the entire record, including the parties' responses to the OSC, and an additional document titled "Memorandum of Agreement between WBAMC and AFGE Local 2516" regarding "Negotiations for Mandatory Seasonal Influenza Immunization for Civilian Health Care Professionals" (March 9 MOA), that the parties signed on March 9, 2011, following their final FMCS mediation session.<sup>1/</sup>

#### BACKGROUND

The WBAMC is a large, free-standing hospital supported by 10-15 regional clinics. Its mission is to provide medical services and preventative healthcare to transitioning and active duty soldiers and their families; to ensure the medical readiness of all Army personnel stationed at Fort Bliss and to train and deliver medics to Army fronts throughout the world. The Union represents a unit of approximately 1,600 professional and non-professional employees that includes doctors, nurses, medical technicians, front desk operators, administrative staff, warehouse suppliers and waste management engineers. The parties are covered by a 3-year master collective bargaining agreement (MCBA) that automatically rolled over for a year when its initial term ended in October 2010.

On April 8, 2008, the Assistant Secretary of Defense (DoD) issued Health Affairs Policy 08-05: "Policy for Mandatory Seasonal Influenza Immunization for Civilian Health Care

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<sup>1/</sup> The Panel Members were made aware of the March 9 MOA for the first time when the Union referred to it in its response to the OSC. In the March 9 MOA, among other things, the parties agreed that they are at impasse on issues in addition to those addressed by the Panel in its OSC. Given that the March 9 MOA represents a written agreement between the parties that the Panel believes deserves deference, the Panel has addressed the effects of its existence on the OSC procedure in the Conclusions section of this decision. Copies of the September 27 Management Proposal, the February 8 MOA, and the March 9 MOA are attached to the Panel's decision.

Personnel Who Provide Direct Patient Care in Department of Defense Military Treatment Facilities" (HA Policy). The policy mandates that all military treatment facilities (MTFs) require HCP who "provide direct patient care" to be "immunized against seasonal influenza infection each year as a condition of employment, unless there is a documented medical or religious reason not to be immunized." In accordance with DoD's instructions, in July 2010, the Headquarters, U.S. Army Medical Command, issued Operation Order 10-65: "2010-2011 Influenza Vaccine Immunization Program" (Order). The Order directs all Army MTFs to implement a civilian immunization policy consistent with that of the HA Policy, after satisfying local bargaining obligations. A list of the HCP job series that provide direct patient care was attached to the Order as Annex C and was titled "Occupations Subject to Mandatory Influenza Vaccinations."

On September 27, 2010, the Employer presented the Union with a comprehensive proposal "to implement mandatory immunization against seasonal influenza to bargaining unit employees" at WBAMC. The Union did not submit a counter to this proposal identifying additional subjects to be covered and/or different wording to be included. The parties, therefore, limited their bargaining to the topics and wording contained in the September 27 Management Proposal. When bilateral efforts to reach agreement on an immunization policy failed, the parties sought the assistance of FMCS. They reached verbal agreement on 12 of the 15 sections in the September 27 Management Proposal at their first mediation session, leaving only Sections 5, 7 and 8 unresolved. The parties later agreed to put their mediated agreements into writing so as to isolate and attempt resolution of the three that were at impasse. In this regard, the Employer would draft a memorandum incorporating the 12 agreed-upon sections, and the Union would attach its proposals for the three remaining sections after signing the memorandum. Accordingly, the Employer drafted the February 8 MOA. The Union, however, did not sign the February 8 MOA, propose alternative wording for any of the 12 sections to which the parties had verbally agreed, nor present counteroffers to the Employer's proposals for Sections 5, 7, or 8. The parties met once more, on March 9, 2011, with the assistance of FMCS, to discuss the February 8 MOA, including the 12 verbally agreed-upon sections and their continuing dispute over Sections 5, 7 and 8. The Union did not provide counteroffers to the Employer's proposals for Sections 5, 7 and 8 but, instead, raised additional issues. Nevertheless, the Employer incorporated all of the new disagreements, as well as their remaining agreements, into the March 9 MOA, which the parties signed on that date.

## ISSUES AT IMPASSE

The parties disagree over the following issues in the February 8 MOA: (1) the definition of "direct health care provider" (Section 5); (2) the procedures to be used for claiming a religious exemption from immunization (Section 7); and (3) who should determine which job series involve "direct health care providers" (Section 8).<sup>2/</sup> In addition, they disagree over Sections 2, 3, and the second paragraph of Section 4, of the March 9 MOA.

## POSITIONS OF THE PARTIES

### 1. The Union's Position

The Union's proposal for Section 5 of the February 8 MOA is that all "administrative staff" be automatically exempted from mandatory immunization and that a "direct health care provider" be defined as one who has "hands on, face-to-face contact with patients for the purpose of diagnosis, treatment and monitoring." It contends that this definition is used by the "Center Disease Control (CDC August 2009)" and is rationally tied to physical exposure. Therefore, it is preferable to the Employer's "blanket inclusion of all employees regardless of their actual duties and true patient contact." The Union's proposal for Section 7 is that anyone who "chooses to invoke their religious right of freedom" may do so by providing a written statement to the Chief of Staff declaring "I choose not to receive this vaccination." The Chief of Staff would have to approve the request and allow the employee to wear a surgical mask during his/her shift. This procedure would ensure that employees enjoy the maximum amount of religious freedom which is "the cornerstone of America." Finally, instead of providing employees with a list of all the job series that will be subject to mandatory immunization, the Union proposes that Section 8 reiterate the CDC definition it proposes for Section 5, i.e., a statement that positions will not be targeted for mandatory influenza vaccination unless the Employer can show that the incumbents have "hands on, face-to-face contact with patients for the purpose of diagnosis, treatment and monitoring."

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<sup>2/</sup> These are the issues and sections over which the parties have been at impasse since the Employer's September 27, 2010, Management Proposal.

## 2. The Employer's Position

With respect to Sections 5 and 8, the Employer does not believe it should be required to include the words "direct health care provider," much less provide a definition for that term. In this regard, the policy applies to all bargaining unit employees covered by the job series included in Annex C - the same Annex C that was attached to the Army Headquarters July, 2010 Order - unless covered individuals can show they are entitled to a *bona fide* medical or religious exemption. This is consistent with both DoD's HA Policy and the Army Order that implements it. The Employer cites the Federal Labor Relations Authority's (FLRA) recent decision in *American Federation of Government Employees, Local 1345 and United States Department of the Army, Army Medical Department Agency, Army Dental Activity, Fort Carson, Colorado*, 64 FLRA 949 (2010) as support. In that case, the Army's Dental Activity implemented a policy that required "all health care providers who have direct contact with patients" to be annually immunized against influenza as a condition of employment. The only HCPs exempted were those with documented, agency-approved medical or religious objections. The union, however, also wanted HCPs to be able to exempt themselves for "personal reasons." Without finding it necessary to define a HCP or describe what constitutes direct patient contact, the FLRA found that the union's proposal to essentially make immunization optional violated the agency's exclusive prerogative to make those decisions when exercising its right, under § 7106 (b) (1) of the Statute, to determine its internal security practices. Finally, the Employer argues that the religious exemption procedure it proposes reasonably balances an employee's real and documented religious objections against management's legitimate interest in protecting the health and safety of everyone at the WBAMC. Those who believe they should be exempted from immunization are asked to submit a written statement to the Fort Bliss EEO Office - the Department with expertise in discrimination and other EEO issues - for a decision. Employees who feel they have been improperly denied an exemption are entitled either to file a grievance under the parties' negotiated grievance procedure or an EEO complaint.

### CONCLUSIONS

Having carefully considered the Union's response to the OSC, we are persuaded that the parties' dispute over Sections 5 and 8, including Annex C, should be resolved on the basis of the September 27 Management Proposal. In our view, the Union has failed to show cause why the Employer's proposed wording on

these issues should not be adopted. While the Union contends that its proposals incorporate the standard recommended by the Centers for Disease Control and Prevention (CDC) in 2009, the CDC's Guidelines and Recommendations for "Prevention Strategies for Seasonal Influenza in Healthcare Settings," dated September 20, 2010, states that HCPs

**include**, but are not limited to physicians, nurses, nursing assistants, therapists, technicians, emergency medical service personnel, dental personnel, pharmacists, laboratory personnel, autopsy personnel, students and trainees, contractual personnel, home healthcare personnel, and persons not directly involved in patient care (e.g., clerical, dietary, house-keeping, laundry, security, maintenance, billing, chaplains, and volunteers) but potentially exposed to infectious agents that can be transmitted to and from HCP and patients. [Emphasis added.]

Based on the above, it appears the Employer's approach in deciding what job series to include in Annex C is more consistent with what the CDC recommends than the Union's. In addition, the Union has failed to show cause why the Employer's proposal on Section 7 should not be adopted. The Employer's approach toward religious exemptions protects the health and safety of everyone at the WBAMC while also providing a mechanism to ensure that those with legitimate religious objections are exempted from mandatory influenza immunization.

With respect to the remaining issues, in comparing the Employer's proposed February 8 MOA and the parties' March 9 MOA, there appears to be no disagreement between them regarding Sections 1, 4, 6, 7 (regarding medical, as opposed to religious, exemptions) and 9 through 15, of the February 8 MOA. Thus, in accordance with the OSC, the Panel essentially shall impose the wording contained therein. The only material differences in the documents concern Sections 2, 3, and the second paragraph of Section 4, of the March 9 MOA. As these matters involve new issues that were not addressed by the parties in their responses to the OSC, they are inappropriate for resolution in this *Decision and Order*. It is clear, however, that these matters were discussed at the March 9, 2011, mediation session and that the parties are at impasse with respect to them. Accordingly, the Panel determines to assert jurisdiction over Sections 2, 3, and the second paragraph of Section 4 in the March 9 MOA, and hereby directs the parties to present them to a arbitrator of their choice for mediation-arbitration, with his or her fees and

related expenses to be shared by the parties. Under this procedure, the designated neutral will first engage in mediation with respect to the issues. Should any not be resolved in this manner, he or she will dispose of them by issuing a binding decision.<sup>3/</sup>

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 WBAMC and AFGE, LOCAL  
2516**

SUBJECT: Negotiations for Mandatory Seasonal Influenza for Civilian Health Care Personnel

1. All privacy act information pertaining to bargaining unit employees will be maintained with the Medical Review Officer (MRO) in the Occupational Health Clinic.
2. & 3. *In accordance with their March 9 MOA, the parties shall submit their dispute over the wording for Sections 2 and 3 to a mediator-arbitrator of their choice for resolution, with his or her fees and related expenses to be shared by the parties.*

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<sup>3/</sup> The arbitrator may decline to consider any proposal about which either party contends it has no obligation to bargain. For guidance in this area, the parties should refer to the Federal Labor Relations Authority's (FLRA) decision in *Commander, Carswell Air Force Base, Carswell AFB, Texas and American Federation of Government Employees, Local 1364*, 31 FLRA 620 (1988), which clarifies the authority of interest arbitrators to consider duty-to-bargain issues raised by the parties during an interest arbitration proceeding. In addition, for a discussion of the appropriate procedure for review of an interest arbitration award, see the FLRA's decision in *Patent Office Professional Association and U.S. Department of Commerce, Patent and Trademark Office*, 41 FLRA 795 (1991).

4. Employees who believe that they have an adverse reaction to the immunization may file a claim under the Federal Employee's Compensation Act (FECA) with the Fort Bliss FECA Office. Such claims will be processed in accordance with applicable regulations and guidelines/procedures issued by the Department of Labor Office of Workers Compensation (DOL-OWCP). Approval of an employee's claim will be made solely by DOL-OWCP. For purposes of clarification only, the parties recognize that DOL-OWCP has advised WBAMC that such claims shall be filed as a CA-1.

*In accordance with their March 9 MOA, the parties shall submit their dispute over the wording for the second paragraph of Section 4 to a mediator-arbitrator of their choice for resolution, with his or her fees and related expenses to be shared by the parties.*

5. Exceptions: Employees may request to be exempt from the requirements of immunization only for medical and religious reasons in accordance with Section 7 below.

6. Employees who become ill as a result of an adverse reaction to the immunization will be placed on sick leave in accordance with the DOL-OWCP (See #4 above). In addition, management will provide employee education as stated below:

"C. Procedures. Education: The parties will work together to educate employees regarding why the Immunization Program has been implemented, the benefits of Immunization to employees/patients, and the procedures to be followed. Such education may include but is not limited to the distribution of literature or the conducting of joint meeting with employees to explain the program. Documentary information shall be provided to the Union for review and comment before it is provided to employees. Union representatives shall be authorized official time for all duty spent on joint educational activities."



## 7. A. Medical Exemptions

1. Employees who believe they should be exempted from immunization due to medical conditions must submit a request for a medical exemption in writing to the designated WBAMC Medical Review Officer within fifteen days of receiving the Notice of Immunization. For good cause as reasonably determined by WBAMC, employees may request an additional extension beyond fifteen days. Such requests must be accompanied by appropriate medical documentation, as reasonably determined by the WBAMC, describing the condition upon which the request for exemption is based. The condition upon which the requested exemption is based must be a condition which is generally accepted by the medical community as precluding seasonal influenza immunization. At his/her discretion, the Medical Review Officer may request additional documentation. The employee may, at his/her discretion, provide the MRO with a medical release to allow the MRO to speak to the employee's physician.

2. The decision of the WBAMC Medical Review Officer shall be provided to the employee in writing and shall be the final decision on behalf of the WBAMC. Employees whose request for exemption is denied will be required to be immunized. The decision of the MRO to deny the request for exemption may be grieved in accordance with the negotiated Grievance Procedure, but the grievance shall not delay immunization.

3. Any medical documentation provided by the employee to the WBAMC Medical Review Officer shall be kept confidential and shall only be shared with the Medical Professionals who the MRO may consult in reaching a decision. Such documentation shall not be shared by WBAMC with the employee's supervisor, unless the supervisor is the Medical Professional whom the MRO finds it necessary to consult.

## B. Religious Exemptions

1. An employee may request exemption from immunization on the grounds that his/her bona-fide religious beliefs preclude receiving medical

treatment. Employees who believe they should be exempted from immunization due to a religious objection must submit a request for a religious exemption in writing, along with a brief explanation of the reasons for the request, to the Fort Bliss Office of Equal Employment Opportunity (EEO) within ten days of receiving the Notice of Immunization.

2. The decision of the Fort Bliss Office of Equal Opportunity (EEO) shall be provided to the employee in writing and shall be the final decision on behalf of WBAMC. Employees whose request for exemption is denied will be required to be immunized. Employees who believe their request for a religious exemption has been wrongfully denied and have been required to receive a vaccination against their will or have suffered an adverse action for refusing a vaccination are entitled to file an EEO complaint using traditional procedures, or may file a grievance in accordance with the applicable Negotiated Grievance Procedure but not both, but the grievance shall not delay immunization.

8. See Annex C attached: Occupations Subject to Mandatory Influenza Vaccinations.

9. If vaccine is not available, management will follow OPOD 10-65, (2010-2011 INFLUENZA VACCINE IMMUNIZATION PROGRAM) - USAMEDCOM:

"3. Execution. a. Commander's Intent. The primary goal of the DoD Influenza vaccine Immunization Program is to protect all Active Duty, National Guard and Reserve personnel, mission essential Department of the Army Civilians, healthcare personnel, and TICARE beneficiaries from influenza and its severe complications. The key task for this operation is to vaccinate personnel listed above, excluding those medically or administratively exempted, upon receipt of influenza vaccine."

10. At its discretion, WBAMC may make alternate arrangements, including the possibility of workplace reassignments, for employees determined exempt from immunizations in order to ensure that such employees do not increase the risk of infection for WBAMC

patients during Flu season. Prior to making such arrangements, WBMAC will take into full consideration the employee's actual duties, work location, and whether the employee is actually involved in day to day direct patient care as opposed to a support condition with occasional contact with patients. Management will also meet with the affected employee and his/her union representative to discuss the matter. WBAMC will make reasonable efforts to accommodate the affected employee(s) with their duty locations with the least hardship to the affected employee.

11. Will apply the same language as in #6 above to cover employees who are ill at time of scheduled immunization.

12. Occupational Health will schedule immunizations. Management will make a schedule and provide Union with notice of the same. Management will schedule immunizations Monday through Thursday during employee's duty time.

13. CDC guidelines will be followed, in accordance with OPORD 10-65.

14. Management will notify the Union of any changes to OPORD 10-65.

15. The word "mandatory" will be used in accordance with OPORD 10-65.

By direction of the Panel.



H. Joseph Schimansky  
Executive Director

August 2, 2011  
Washington, D.C.

# SEPTEMBER 27 MANAGEMENT PROPOSAL

## MANAGEMENT PROPOSAL

Preamble: Pursuant to Department of Defense HA Policy 08-005, Policy for Mandatory Seasonal Influenza Immunization for Civilian Health Care Personnel, guidance from the Centers for Disease Control and Prevention (CDC), Medical Command (MEDCOM) Operations Order 10-65 (2010-2011) Influenza Vaccine Immunization Program and consistent with sound medical practice, the William Beaumont Army Medical Center (WBAMC) has decided to implement mandatory immunization against seasonal influenza to bargaining unit employees. This Agreement is entered into between the American Federation of Government Employees, Local 2516, (Union) and WBAMC, concerning the implementation by WBAMC of this Policy. This Agreement constitutes the complete understanding between the Union and WBAMC. No other promises or agreements will be binding unless signed by all parties.

Provision 1: The Union does not by signing this Agreement suggest they agree with WBAMC's substantive decision to implement this policy. The negotiation of these provisions does not waive the Union's right to challenge through litigation (including grievance-arbitration and negotiability appeal) WBAMC's substantive decision to implement this policy, including the decision to apply this policy to all bargaining unit employees. Upon the conclusion of such litigation, either party shall have the right to reopen this agreement to address the results of that litigation. Such reopener shall be exercised by providing the other parties written notice within thirty (30) days of the conclusion of such negotiations.

Provision 2: If WBAMC decides to modify or terminate this program, it will provide the Union with at least two weeks prior notice.

Provision 3: Notice: All employees will receive a written (email) Notice of Immunization at least seven calendar days prior to being immunized. The Notice will advise employees of the purposes of the Immunization Program, the benefits of the immunization to both the employee and the patients served by WBAMC, and any potential adverse effects of immunization. The Notice shall explain that immunization will take place during paid duty time (not overtime) at WBAMC, unless the employee chooses to be immunized by his/her private physician. The Notice shall also advise employees that immunization is a condition of employment and that refusal to be immunized without a valid exception may lead to disciplinary/adverse action. Any disciplinary/adverse action to be taken will be carried out in accordance with applicable regulations and the provisions of the applicable Collective Bargaining Agreement.

Provision 4: Use of Private Physician: Employees may choose to be immunized by their Private Physician or Health Care Provider (at their own expense) instead of being immunized by WBAMC. Employees who choose to be immunized by their Private Physician or Health Care Provider must provide appropriate medical documentation, verifying their immunization, to the designated WBAMC Medical Review Officer (MRO) within fifteen days of receiving the Notice of Immunization. The immunization must have occurred during or at the beginning of the current flu season.

Provision 5: Exceptions: Employees may request to be exempt from the requirements of immunization only under the following conditions.

A. Medical:

1. Employees who believe they should be exempted from immunization due to medical conditions must submit a request for a medical exemption in writing to the designated WBAMC Medical Review Officer within fifteen days of receiving the Notice of Immunization. For good cause as reasonably determined by WBAMC, employees may request an additional extension beyond fifteen days. Such requests must be accompanied by appropriate medical documentation, as reasonably determined by WBAMC, describing the condition upon which the request for exemption is based. The condition upon which the requested exemption is based must be a condition which is generally accepted by the medical community as precluding seasonal influenza immunization. At his/her discretion, the Medical Review Officer may request additional documentation. The employee may, at his/her discretion, provide the MRO with a medical release to allow the MRO to speak to the employee's physician.

2. The decision of the WBAMC Medical Review Officer shall be provided to the employee in writing and shall be the final decision on behalf of WBAMC. Employees whose request for exemption is denied will be required to be immunized. The decision of the MRO to deny the request for an exemption may be grieved in accordance with the negotiated Grievance Procedure, but the grievance shall not delay immunization.

3. Any medical documentation provided by the employee to the WBAMC Medical Review Officer shall be kept confidential and shall only be shared only with Medical Professionals who the MRO may consult in reaching a decision. Such documentation shall not be shared by WBAMC with the employee's supervisor, unless the supervisor is the Medical Professional whom the MRO finds it necessary to consult.

B. Religious

1. An employee may request exemption from immunization on the grounds that this/her bona-fide religious beliefs preclude receiving medical treatment. Employees who believe they should be exempted from immunization due to a religious objection must submit a request for a religious exemption in writing, along with a brief explanation of the reasons for the request, to the Fort Bliss Office of Equal Employment Opportunity (EEO) within ten days of receiving the Notice of Immunization.

2. The decision of the Fort Bliss Office of Equal Employment Opportunity (EEO) shall be provided to the employee in writing and shall be the final decision on behalf of WBAMC. Employees whose request for exemption is denied will be required to be immunized. Employees who believe their request for a religious exemption has been wrongfully denied and have been required to receive a vaccination against their will or have suffered an adverse action for refusing a vaccination are entitled to file an EEO complaint using traditional procedures, or may file a grievance in accordance with the applicable Negotiated Grievance Procedure not both, but the grievance shall not delay immunization.

C. Procedures:

1. At its discretion, WBAMC may make alternate arrangements, including the possibility of workplace reassignments, for employees determined exempt from immunization in order to ensure that such employees do not during Flu season increase the risk of infection for WBAMC patients. Prior to making such arrangements WBAMC will take into full consideration the employee's actual duties, work location, and whether the employee is actually involved in day to day direct patient care as opposed to a support condition with occasional contact with patients. Management will also meet with the affected employee and his/her union representative to discuss the matter. WBAMC will make reasonable efforts to accommodate the affected employee(s) with their duty locations with the least hardship to the affected employee.

2. WBAMC will not change the duty hours or shifts of an employee who has been exempted from taking the Flu shot or mist without good cause (as determined by WBAMC, subject to the Union's grievance rights). WBAMC will give the employee 14 days notice in writing of any detail/shift/hours, and the expected date of the employees return to their normal work area and shift hours. The Union retains all grievance rights it may have regarding this issue.

Provision 5: Claims: Employees who believe that they have an adverse reaction to the immunization may file a claim under the Federal Employee's Compensation Act (FECA) with the Ft Bliss FECA office. Such claims will be processed in accordance with applicable regulations and guidelines/procedures issued by the Department of Labor Office of Workers Compensation (DOL-OWCP). Approval/disapproval of an employee's claim will be made solely by DOL-OWCP. For purposes of clarification only, the parties recognize that DOL-OWCP has advised WBAMC that such claims shall be filed as CA-1.

Provision 6: Education: The parties will work together to educate employees regarding why the Immunization Program has been implemented, the benefits of Immunization to employees and patients, and the procedures to be followed. Such education may include but is not limited to the distribution of literature or the conducting of joint meetings with employees to explain the program. Documentary information shall be provided to the Unions for review and comment prior to be given to employees. Union representatives shall be authorized official time for all duty time spent on joint educational activities.

ANNEX C (OCCUPATIONS SUBJECT TO MANDATORY INFLUENZA VACCINATIONS)  
 TO OPERATION ORDER 10-65 (2010 - 2011 INFLUENZA VACCINE IMMUNIZATION  
 PROGRAM) – USAMEDCOM UNCLASSIFIED C-1

Occupations Subject to Mandatory Influenza Immunizations

Minimum Healthcare Personnel	Job Series
Audiologists	0665
Chiropractors	
Dental Hygienists	0682
Dental Lab Aids	0683
Dental Technicians	0681
Dentists	0680
Diagnostic Radiologic Technicians	0647
Health Technicians	0640
LPNs/LVNs	0620
Medical Clerks	0679
Medical Instrument Technicians	0649
Medical Technicians	0645
Medical Technician Assistants	0650
Medical Technologists	0644
Nuclear Medicine Technicians	0642
Nursing Assistants	0621
Nutritionists/Dieticians	0630
Occupational Therapists	0631
Optometrists	0662
Orthotists and Prosthetists	0667
Pharmacists	0660
Pharmacy Technicians	0661
Physical Therapists	0633
Physical Therapy Assistants	0636
Physician Assistants	0603
Physicians	0602
Podiatrists	0668
Psychologists	0180
Registered Nurses	0610
Respiratory Therapists	0651
Speech Pathology	0665
Social Workers	0185
Therapeutic Radiologic Technicians	0648

DEPARTMENT OF THE ARMY  
 William Beaumont Army Medical Center  
 5005 North Piedras Street  
 El Paso, TX 79920-5001

REPLY TO  
 ATTENTION OF:

8 February 2011

MCHM-MZC

MEMORANDUM OF AGREEMENT BETWEEN WBAMC and AFGE, LOCAL 2516

SUBJECT: Negotiations for Mandatory Seasonal Influenza Immunization for Civilian Health Care Personnel

The following are agreements reached between William Beaumont Army Medical Center (WBAMC) and AFGE, Local 2516 during negotiations held on November 18, 2010 facilitated by Commissioner Pete Cinquemani of the FMCS, with the exception of #'s 5,7, and 8 which are at impasse.

1. All privacy act information pertaining to bargaining unit employees will be maintained with the Medical Review Officer (MRO) in the Occupational Health Clinic.

2&3. At its discretion, WBAMC may make alternate arrangements, including the possibility of workplace reassignments, for employees determined exempt from immunization in order to ensure that such employees do not increase the risk of infection for WBAMC staff and patients during Flu season. Parties agree that employee's refusal to comply with mandatory influenza vaccination will result in removal for "just cause" and in accordance with the Army Table of Penalties.

4. Employees who believe that they have an adverse reaction to the immunization may file a claim under the Federal Employee's Compensation Act (FECA) with the Fort Bliss FECA office. Such claims will be processed in accordance with applicable regulations and guidelines/procedures issued by the Department of Labor Office of Workers Compensation (DOL-OWCP). Approval of an employee's claim will be made solely by DOL-OWCP. For purposes of clarification only, the parties recognize that DOL-OWCP has advised WBAMC that such claims shall be filed as a QA-1.

5. Impasse over negotiability of who determines the definition of "direct health care provider".

6. Employees who become ill as a result of an adverse reaction to the immunization will be placed on sick leave in accordance with the DOL-OWCP (see #4 above). In addition, management will provide employee education as stated below.

"C. Procedures. Education: The parties will work together to educate employees regarding why the Immunization Program has been implemented, the benefits of Immunization to employees/patients, and the procedures to be followed. Such education may include but is not limited to the distribution of literature or the conducting of joint meeting with employees to explain the program. Documentary information shall be provided to the Union for review and comment before it is provided to employees. Union representatives shall be authorized official time for all duty time spent on joint educational activities."

7. Impasse over procedures for religious exemption.

8. Impasse over negotiability of who determines job series of "direct health care provider".



9. If vaccine is not available, management will follow OPORD 10-65, (2010-2011 INFLUENZA VACCINE IMMUNIZATION PROBRAGRAM) – USAMEDCOM:

“3. Execution. a. Commander’s Intent. The primary goal of the DoD Influenza vaccine Immunization Program is to protect all Active Duty, National Guard and Reserve personnel, mission essential Department of the Army Civilians, healthcare personnel, and TICARE beneficiaries from influenza and its severe complications. The key task for this operation is to vaccinate personnel listed above, excluding those medically or administratively exempted, upon receipt of influenza vaccine.”

10. At its discretion, WBAMC may make alternate arrangements, including the possibility of workplace reassignments, for employees determined exempt from immunizations in order to ensure that such employees do not increase the risk of infection for WBAMC patients during Flu season. Prior to making such arrangements, WBAMC will take into full consideration the employee’s actual duties, work location, and whether the employee is actually involved in day to day direct patient care as opposed to a support condition with occasional contact with patients. Management will also meet with the affected employee and his/her union representative to discuss the matter. WBAMC will make reasonable efforts to accommodate the affected employee(s) with their duty locations with the least hardship to the affected employee.

11. Will apply the same language as in #6 above to cover employees who are ill at time of scheduled immunization.

12. Occupational Health will schedule immunizations. Management will make a schedule and provide Union with notice of the same. Management will schedule immunizations Monday through Thursday during employee’s duty time.

13. CDC guidelines will be followed, in accordance with OPORD 10-65.

14. Management will notify the Union of any changes to OPORD 10-65.

15. The word “mandatory” will be used in accordance with OPORD 10-65.

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MAJ Brian Freidline  
WBAMC Deputy Chief of Staff

\_\_\_\_\_  
Mr. Paul Ferris  
Union President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



DEPARTMENT OF THE ARMY  
William Beaumont Army Medical Center  
5095 North Piedras Street  
El Paso, TX 79920-5001

REPLY TO  
ATTENTION OF:

MCHM-MZC

9 March 2011

MEMORANDUM OF AGREEMENT BETWEEN WBAMC and AFGE, LOCAL 2516

SUBJECT: Negotiations for Mandatory Seasonal Influenza Immunization for Civilian Health Care Personnel

The following are agreements reached between William Beaumont Army Medical Center (WBAMC) and AFGE, Local 2516 during negotiations held on November 18, 2010 facilitated by Commissioner Pete Cinquemani of the FMCS, with the exception of #'s 5,7, and 8 which are at impasse.

1. All privacy act information pertaining to bargaining unit employees will be maintained with the Medical Review Officer (MRO) in the Occupational Health Clinic.

~~2&3. At its discretion, WBAMC may make alternate arrangements, including the possibility of workplace reassignments, for employees determined exempt from immunization in order to ensure that such employees do not increase the risk of infection for WBAMC staff and patients during Flu season. Parties agree that employee's refusal to comply with mandatory influenza vaccination will result in removal for "just cause" and in accordance with the Army Table of Penalties.~~

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2. WBAMC will make reasonable efforts to accommodate employees determined to be exempt from the mandatory influenza immunization program (medical/religious) in order to ensure that such employees do not increase the risk of infection for staff/patients during the flu season. WBAMC will give affected employees 14 days notice in writing of any detail/reassignment/shift/hours and the expected date of employee's return to their normal work area/shift/hours.

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Impasse is bolded and in italics.

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Union wants mandatory and medical/religious removed

3. Supervisors will ensure that all employees receive a written and confirmed acknowledgment notice of immunization at least 14 days prior to being immunized. The notice will advise employees of the purpose of the program, the benefits of it to both staff and patients. Employees will be informed of possible medical adverse reactions to vaccine. Adverse actions will also be part of the education process. Parties agree that the current Army Table of Penalties will be enforced in the event that an employee refuses to comply with the vaccinations provisions.

Impasse is bolded and in italics

Management wants to include language in bold and italics

4. Employees who believe that they have an adverse reaction to the immunization may file a claim under the Federal Employee's Compensation Act (FECA) with the Fort Bliss FECA office. Such claims will be processed in accordance with applicable regulations and guidelines/procedures issued by the Department of Labor Office of Workers Compensation (DOL-OWCP). Approval of an employee's claim will be made solely by DOL-OWCP. For purposes of clarification only, the parties recognize that DOL-OWCP has advised WBAMC that such claims shall be filed as a CA-1.

Employees may choose to be immunized by their private physician or health care provider (at their own expense) instead of being immunized by WBAMC. However, employees may be reimbursed for the cost of the flu vaccine in the event that the vaccine is not available at WBAMC and will be allowed up to two hours of duty time. Medical documentation will be submitted to the MRO within 15 days of immunization. The immunizations must have occurred during or that the beginning of the current flu season. All documentation will be IAW CDC guidelines IAW OPOD 10-65. Management officials will be held accountable in accordance with the Army Table of Penalties.

Impasse in bold and italics

Union wants language in bold and italics included; management disagrees.

5. Impasse over negotiability of who determines the definition of "direct health care provider".

6. Employees who become ill as a result of an adverse reaction to the immunization will be placed on leave in accordance with the DOL-OWCP (see #4 above). Approval or disapproval of a claim will be made by DOL/OWCP. In addition, management will provide employee education as stated below.

"C. Procedures. Education: The parties will work together to educate employees regarding why the Immunization Program has been implemented, the benefits of immunization to employees/patients, and the procedures to be followed. Such education may include but is not limited to the distribution of literature or the conducting of joint meeting with employees to explain the program. Documentary information shall be provided to the Union for review and comment before it is provided to employees. Union representatives shall be authorized official time for all duty time spent on joint educational activities."

Agreed by both parties

7. Impasse over procedures for religious exemption.

8. Impasse over negotiability of who determines job series of "direct health care provider".

9. If vaccine is not available, management will follow OPOD 10-65, (2010-2011 INFLUENZA VACCINE IMMUNIZATION PROGRAM) – USAMEDCOM:

“3. Execution. a. Commander’s Intent. The primary goal of the DoD Influenza vaccine Immunization Program is to protect all Active Duty, National Guard and Reserve personnel, mission essential Department of the Army Civilians, healthcare personnel, and TRICARE beneficiaries from influenza and its severe complications. The key task for this operation is to vaccinate personnel listed above, excluding those medically or administratively exempted, upon receipt of influenza vaccine.”

Union’s proposal addressed under #4.

Impasse with #4.

10. At its discretion, WBAMC may make alternate arrangements, including the possibility of workplace reassignments, for employees determined exempt from immunizations in order to ensure that such employees do not increase the risk of infection for WBAMC patients during Flu season. Prior to making such arrangements, WBAMC will take into full consideration the employee’s actual duties, work location, and whether the employee is actually involved in day to day direct patient care as opposed to a support condition with occasional contact with patients. Management will also meet with the affected employee and his/her union representative to discuss the matter. WBAMC will make reasonable efforts to accommodate the affected employee(s) with their duty locations with the least hardship to the affected employee.

Union’s proposal addressed under #4.

Impasse with #4.

11. Will apply the same language as in #6 above to cover employees who are ill at time of scheduled immunization.

Agreed by both parties.

12. Occupational Health will schedule immunizations. Management will make a schedule and provide Union with notice of the same. Management will schedule immunizations Monday through Thursday during employee’s duty time.

Agreed by both parties.

13. CDC guidelines will be followed, in accordance with OPOD 10-65.

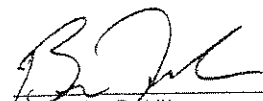
Agreed by both parties.

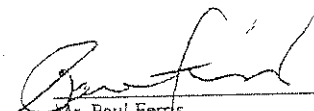
14. Management will notify the Union of any changes to OPORD 10-65 within a 14 day written notice. There will be no implementation of any changes 30 days prior to union/employees being notified.

Agreed by both parties.

15. The word "mandatory" will be used in accordance with OPORD 10-65.

Impasse by both parties over the word "mandatory".

  
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MAJ Brian Feidline  
WBAMC Deputy Chief of Staff

  
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Mr. Paul Ferris  
Union President

9 Mar 2011  
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