

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

**DEPARTMENT OF VETERAN AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
BLACK HILLS HEALTH CARE SYSTEM**

And

**AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFGE COUNCIL 259, LOCAL 1539
AND LOCAL 2342**

Case No. 24 FSIP 026

DECISION AND ORDER

The mission of the Department of Veterans Affairs (VA) is to fulfill President Lincoln's promise "To care for him who shall have borne the battle, and for his widow, and his orphan" by serving and honoring the men and women who are America's veterans. This case concerns a request for Panel assistance filed by the VA's Black Hills Health Care System (Agency) involving the negotiations of the Agency's decision to change the Firefighters in both Fort Meade, SD, and Hot Springs, SD, to a 72-hour (144 hour pay period) workweek schedule. The American Federation of Government Employees, Council 259 (Union) represents the two impacted locals (i.e., Local 1539 and Local 2342) and the approximate 26 impacted Firefighters. The parties are governed by a National Collective Bargaining Agreement (CBA) that was enacted in 2023. This dispute was filed pursuant to §7119 of the Federal Service Labor-Management Relations Statute (the Statute). The Federal Service Impasses Panel (Panel or FSIP) asserted jurisdiction over this dispute and directed the matter to be resolved through a Written Submission procedure.

BARGAINING AND PROCEDURAL HISTORY

The VA Fire Department in Hot Springs, SD, had been experiencing a staffing shortage, resulting in mandatory overtime and staff working additional shifts. VA Directive 7718 – FIRE DEPARTMENT SERVICES AT VA FACILITIES AND DOMICILIARIES states a minimum of four trained firefighters must be maintained on duty at all times, 24 hours per day, regardless of absences for sick leave, annual leave, or staffing shortages. In June 2021, the Union proposed, and the Agency agreed to a temporary change (a pilot) from a 56-hour to a 72-hour workweek schedule in order to ensure the maintenance of staffing levels at 11 firefighting personnel. The pilot was scheduled to be in place for 90 days, with the option to extend to 120 days. The parties agreed to return to the 56-hour workweek schedule at the end of the pilot. In October 2021, the parties agreed to extend the temporary 72-hour workweek schedule until staffing numbers reach at least 10 full-time firefighting personnel. In May 2023, the parties negotiated their third local agreement to extend the 72-hour workweek schedule pilot through October 2023 as the staffing level continued to be below 10 full-time Firefighters.

The Agency has now proposed to make the pilot permanent in Hot Springs, SD, and to put the Firefighters at the Ft Meade location on the same 72-hour workweek schedule. The Firefighters at the Hot Springs location reported that they liked working the 72-hour workweek schedule. Additionally, the 72-hour schedule would align the Ft. Meade facility with all of the other national VA locations with fire departments and most Department of Defense (DoD) fire departments. The proposed change would permit the Agency to be competitive with its VA and DoD counterparts in the promotion, recruitment, and retention of firefighter personnel. The proposed change would promote consistency and continuity of services in the provision of life safety services that impact Veteran care. The 72-hour workweek schedule would help the Agency continue to meet the required staffing levels while also improving work/life balance and reducing overtime demands. The proposed effective date of the change was October 1, 2023. The parties engaged in direct negotiations and mediated negotiations and were able to reach an agreement on six (6) out of eight (8) provisions in the MOU.

ISSUE AND PARTY PROPOSALS

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

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

renegotiate this Agreement no less than sixty or more than one hundred and twenty days prior to its termination date.

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

POSITION OF THE PARTIES

1. Agency

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

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

The Agency also argued that moving the Firefighters from a 56-hour schedule to a 72-hour schedule results in more overtime and is more costly to the Agency. However, since the Fire Department is required to maintain a minimum staffing level, the Agency agrees that, at this time, the 72-hour schedule is the best option. The Agency hopes that the staffing shortage will not persist forever, and, at some point, it may be more cost-effective to return to the 56-hour schedule. The Agency would like the opportunity to reconsider the schedule should the staffing shortage be relieved. That is why the Agency is seeking the reopener clause that will provide the flexibility in 3 years and beyond to reevaluate this condition of employment.

2. Union

First, the Union argued that this matter isn't a matter of local negotiations because this matter involves not one but two locals (i.e., Local 1539 and Local 2342); therefore, it is inherently a national matter, not a local matter. The Union argued that national agreements traditionally do not have reopeners but instead rely on the terms of the national CBA; they only reopen when the national CBA reopens. The Union argued that the Panel should reject the Agency's argument that local agreements tend to have reopeners. Instead, the Union argued that the examples provided by the Agency were actually national agreements that support the Union's argument that national CBAs don't tend to have reopeners, and neither should this agreement.

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

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

PANEL DISCUSSION AND DECISION

In sum, the Agency argued that there should be a three-year reopener because while the 72-hour work schedule is not new to the Hot Springs location, it is new to the Firefighters at the Fort Meade location. While the parties have agreed to a number of terms that should address many foreseen issues or concerns, there will inevitably be unforeseen issues that either party may want to address as the new terms are executed, such as overtime costs, should the staffing issues be resolved. Providing for a 3-year reopener would provide an opportunity for either party to raise and address concerns. If the parties simply rely on the terms of the national CBA, many years may pass before a party can raise and address concerns.

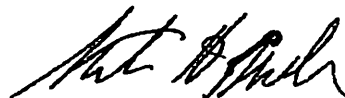
The Union argued that this is more akin to a national agreement. The Union argued that the parties do not traditionally include a reopener clause in national agreements; therefore, they should not include one here. It should be noted that while the National AFGE representative advised the Agency (via email) early in the bargaining process that the AFGE locals do not have the authority to include a reopener in their agreement, no argument was made during the investigation or in the Union's written transmittal that such a provision would be in conflict with the national CBA. The Union's argument was simply based upon tradition; national MOUs do not traditionally have reopeners but are subject to the reopening of the national CBA.

The Panel found the Agency's concern about balancing the cost of the schedule, the benefits to the employees, and the staffing needs of the Agency is compelling. The Union's argument that the parties would have to come back to the table for every local agreement in 3 years and that would be taxing on the parties' resources is a stretch. While they may have to come back to the table in 3 years or longer for this agreement, it will be because the established practice needs to be addressed and balanced with the cost to the Agency. The other extreme alternative would be to allow the costly schedule practices to remain in place for many years (e.g., national CBA in place since 2011) without regard to the cost-benefit analysis. A more balanced approach would be to allow some reasonable time to pass before either party reopens the agreement. As the parties have already agreed that 3 years before opening terms is reasonable, the Panel has determined that the parties will adopt the Agency's proposal, which allows for a reopener after 3 years.

ORDER

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

This Agreement shall remain in full force and effect for a period of three years after its effective date. It shall be automatically renewed for one-year periods unless either party gives the other party notice of its intention to renegotiate this Agreement no less than sixty or more than one hundred and twenty days prior to its termination date.



Martin H. Malin
FSIP Chairman

April 5, 2024