

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF THE ARMY  
U.S. ARMY MEDICAL COMMAND  
FOX ARMY HEALTH CENTER  
REDSTONE ARSENAL, ALABAMA

and

LOCAL 1858, AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 16 FSIP 23

DECISION AND ORDER

The Department of the Army, U.S. Army Medical Command, Fox Army Health Center, Redstone Arsenal, Alabama (Employer) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and Local 1858, American Federation of Government Employees, AFL-CIO (Union).

Following an investigation of the Employer's request for assistance, which involves a dispute over the implementation of Army Regulation 600-63 (AR 600-63) and Operations Order 15-70 (OPORD 15-70) concerning cessation of the use of tobacco products - primarily cigarettes - by employees working at the Employer's medical treatment facility (MTF),<sup>1/</sup> the Panel determined that this impasse should be resolved through written submissions from the parties with the opportunity for rebuttal statements. The parties were informed that, after considering the entire record, the Panel would take whatever action it deemed appropriate to resolve the dispute, which may include the issuance of a binding decision. The Panel has now considered

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<sup>1/</sup> AR 600-63 was issued on April 14, 2015. OPORD 15-70 was issued by the Southern Regional Medical Command (SRMC) on June 4, 2015, and provides activities under its authority, such as the Fox Army Health Center at Redstone Arsenal, with specific instructions for implementing AR 600-63.

the entire record, including the parties' final offers, written submissions, and the Union's rebuttal statement.

### BACKGROUND

The Employer, a component of the Department of the Army, is one of several dozen commands located on Redstone Arsenal. Its mission is to provide medical services for the installation's personnel and their dependents. The Union represents approximately 150-200 mostly medical professionals, GS-9 through -13. The parties are covered by a local collective bargaining agreement (CBA) that is due to expire in May 2016.

### ISSUE

The parties disagree over whether AR 600-63 and OPOD 15-70 should be implemented without modifications.

### POSITIONS OF THE PARTIES

#### 1. The Employer's Position

The Employer proposes implementing AR 600-63 and OPOD 15-70 in their entirety without any deviation. The heart of the dispute concerns the requirement that employees who work in the MTF will be prohibited from using tobacco products anywhere on the MTF campus, including its parking lots, as well as anywhere on Redstone Arsenal while they are on duty (which includes breaks and lunch periods).<sup>2/</sup> In essence, the Employer maintains that the Army Surgeon General has directed Army MTFs to move towards a smoke-free campus and the Employer is seeking to "comply[] with the directive that was issued."

In the Employer's view, the foregoing action is necessary to promote the health and safety of patients and staff. As medical professionals, MTF employees should seek to promote a healthy environment that is tobacco-free. Other MTFs in the country have willingly adopted the instructions in full; Redstone Arsenal's MTF should follow suit. Permitting MTF employees to smoke in their privately-owned vehicles (POVs) on

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<sup>2/</sup> AR 600-63, Section 7-3 d. - "Policy for controlling tobacco use" - states that "health care personnel will not use any tobacco products during the duty day or while in uniform." OPOD 15-70 states that "upon full implementation no SRMC personnel will use any tobacco products during the duty day."

the MTF campus, as proposed by the Union during negotiations, is unacceptable because it would detract from the ideal of a tobacco-free campus. As a concession, the Employer is willing to provide employees with free "smoking cessation training."

## 2. The Union's Position

The Union opposes the Employer's position and proposes that the parties maintain the *status quo*. Currently, employees are allowed to smoke 50 feet away from the MTF (Fox Army Health Center) building's points of egress as well as in their POVs in the MTF's parking lot. Redstone Arsenal houses 22 commands, including the Employer, and none of the other commands are facing any sort of smoking ban. Because the Union represents other units in those commands, it contends it cannot allow the Employer to impose the MTF ban because doing so would likely create a "domino effect" for the other commands.

During mediation, the Employer also insisted that it could not allow employees to work in the MTF with the odor of tobacco smoke on their clothes. But the Employer has presented no evidence to show that this would create any sort of health risk. Indeed, the Employer has not proved that "second and third-hand tobacco" exposure harms patients. Moreover, employees could still smoke before they come to work which would still leave the odor of tobacco smoke on their clothes. Finally, the Employer's position infringes upon employees' "right" to smoke and personal liberty.

## CONCLUSION

Having carefully considered the evidence and arguments presented in support of their positions, we shall order a compromise solution to resolve the parties' impasse regarding this matter. In this regard, we shall order that the two instructions be implemented with the proviso that MTF unit employees be permitted to use tobacco products in POVs when they are on the MTF campus. In addition, MTF unit employees will be permitted to: (1) use these products in compliance with existing practices and policies when elsewhere on Redstone Arsenal; and (2) partake in any tobacco-cessation training offered by the Employer. The record reveals that during negotiations, and for much of the Panel's initial investigation, the Union put forth a proposal that would permit the use of tobacco products in POVs on the MTF campus as a way to resolve this dispute. The Union has not explained why it abandoned this proposal, and it never

claimed that the proposal's adoption would be problematic for MTF unit employees.

Adopting this approach would permit MTF employees to use tobacco on the MTF campus to a limited degree, and on the rest of the installation, in a manner that does not expose non-smokers to the harmful effects of second-hand smoke. It would also minimize the visibility of tobacco use by MTF employees while they are working on campus, consistent with the Employer's stated interests. Finally, offering free tobacco-cessation training to MTF unit employees also would further the Employer's interests by potentially reducing the number of employees who use tobacco products.

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 under 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 adoption of the following wording:

AR 600-63 and OPORD 15-70 shall be implemented with the following exception: Bargaining unit employees working at the Fox Army Health Center/Medical Treatment Facility (MTF) will be permitted to use tobacco products in privately-owned vehicles when they are on the MTF campus. In addition, MTF unit employees will also be permitted to: (1) use tobacco products in the other areas of Redstone Arsenal in accordance with existing policies and practices; and (2) participate in any tobacco-cessation training offered by the Employer.

By direction of the Panel.



H. Joseph Schimansky  
Executive Director

April 28, 2016  
Washington, D.C.