



**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges  
WASHINGTON, D.C. 20424

OALJ 17-18

FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL INSTITUTION  
BASTROP, TEXAS

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3828, AFL-CIO

CHARGING PARTY

Case No. DA-CA-16-0386

Marko Cvijanovic  
For the General Counsel

Angie Wiesman  
For the Respondent

Jeff Ormsby  
For the Charging Party

Before: CHARLES R. CENTER  
Chief Administrative Law Judge

**DECISION ON MOTIONS FOR SUMMARY JUDGMENT**

Motions for summary judgment filed under § 2423.27 of the Authority's Rules and Regulations are governed by the same principles as motions filed under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of VA, VA Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). Summary judgment is appropriate when there is no "genuine dispute as to any material fact" and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. In this case, the General Counsel and the Respondent have each filed a motion for summary judgment asserting that there are no genuine issues of material fact in dispute. After reviewing the motions and other pleadings, I find that summary judgment is appropriate as the only issues to be decided are questions of law. Therefore, the hearing in this case is cancelled.

## STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135, and the revised Rules and Regulations of the Federal Labor Relations Authority (Authority/FLRA), 5 C.F.R. parts 2423 and 2429.

On July 13, 2016, the American Federation of Government Employees, Local 3828, AFL-CIO (Union) filed an unfair labor practice (ULP) charge against the Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas (FCI Bastrop/Respondent). Following an investigation of the charge, a Complaint and Notice of Hearing was issued on January 25, 2017, by the Regional Director of the Dallas Region, alleging a refusal to negotiate over flexible work schedules as required by Section 6131 of the Work Schedules Act (5 U.S.C. §§ 6120-6133), and a violation of 5 U.S.C. § 7116(a)(1) and (5). An Amended Complaint was issued on January 26, 2017, to correct the date of hearing.

On May 26, 2017, the General Counsel filed a Motion for Summary Judgment and a Brief in Support of its motion for summary judgment (GC Br.), along with Exhibits 1 through 9. The General Counsel filed prehearing disclosures on May 27, 2017. The Respondent filed prehearing disclosures on May 30, 2017, and amended its disclosures on June 5, 2017. Subsequently, the Respondent filed a Response (R. Br.) to the General Counsel's motion for summary judgment and a Cross-Motion for Summary Judgment on June 5, 2017, attaching four sworn declarations along with Exhibits 1 through 8. A prehearing conference call was held with the parties on June 7, 2017, and the parties agreed that there were no genuine issues of material fact in dispute and that a decision upon the motions for summary judgment was appropriate.

Therefore, based on the record, I find that the Respondent did not violate § 7116(a)(1) and (5) of the Statute when it refused to negotiate a change to the hours of work for bargaining unit employees working in Financial Management at FCI Bastrop. In support of this determination, I make the following findings of fact, conclusions of law, and recommendations.

## FINDINGS OF FACT

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. Amend. Compl ¶2. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the exclusive representative of a nationwide consolidated unit of Federal Bureau of Prisons employees, including the Respondent. *Id.* at ¶3. The Union is an agent of AFGE for the purpose of representing unit employees of the Respondent. *Id.* ¶4.

FCI Bastrop is a low security federal institution housing approximately 1300 federal inmates and approximately 230 employees who work within eight departments, one of which is Financial Management, which has six bargaining unit employees. GC Ex. 1-2. AFGE has been the certified exclusive representative of bargaining unit employees at FCI Bastrop since 1979. *Id.* at 1. On July 21, 2014, a new nationwide master agreement was effectuated between AFGE and the Federal Bureau of Prisons. R. Ex. 1. Article 18 of that agreement covers Hours of Work, and Section (b) of that Article states: “[t]he parties at the national level agree that requests for flexible **and/or** compressed work schedules may be negotiated at the local level . . . .” GC Ex. 4. This language reflected a continuation of language from a prior agreement between the parties.

In December 2014, the Union and management at FCI Bastrop completed local negotiation over the hours of work to be utilized by the Financial Management employees at FCI Bastrop and a Memorandum of Understanding (MOU) was signed on December 31, 2014, which became effective in January 2015. R. Ex. 4. The MOU established the use of a compressed work schedule for bargaining unit employees working in Financial Management on a trial basis for six months. *Id.* The parties agreed that at the conclusion of the six month trial period the option to use a compressed work schedule to determine hours of work would become final, giving either party the right to revisit the MOU during the trial period. *Id.*

On May 6, 2016, over ten months after the trial period for the MOU had passed, the Union sought bargaining for a flexible work schedule on behalf of bargaining unit employees working in Financial Management. GC Ex. 5. On May 25, 2016, the Respondent refused to bargain, asserting there was no duty to bargain because the hours of work for those employees was covered by the previously negotiated MOU that implemented a compressed work schedule. GC Ex. 6.

## POSITIONS OF THE PARTIES

### General Counsel

The General Counsel (GC) asserts that the Respondent has a duty to bargain flexible work hours according to the Statute, and that the refusal to bargain violates the Statute. The GC argues that the mid-term proposal regarding flexible work schedules is not covered by the master agreement, which required the parties to bargain such issues locally. The GC alleges that this issue is similar to “FCI Williamsburg Salters” because the master agreement provides a specific obligation to bargain. GC Br. at 8. The GC argues that the establishment of a compressed work schedule does not preclude the establishment or negotiation of a flexible work schedule agreement. Finally, the GC asserts that the Respondent violated § 7116(a)(1) and (5) of the Statute when it refused bargain over a flexible work schedule. GC Br. at 6-7; GC Ex. 5-7.

## Respondent

The Respondent contends that the topic of hours of work, specifically flexible work schedules, was covered by the master collective bargaining agreement (CBA), and that the covered by doctrine applies as a defense for its refusal to bargain. R. Br. at 8-9. The Respondent argues that local negotiations on hours of work resulting in the adoption of an MOU establishing a compressed work schedule precludes the duty to further negotiate a flexible work schedule. Absent a finding that the covered by doctrine applies, the Respondent also submits that the implementation of a flexible work schedule for Financial Management employees would have an adverse impact on the mission of the Agency because a flexible work schedule would limit the availability of Financial Management employees and would undermine emergency manning plans at FCI Bastrop when those employees are required to perform correctional activities. *Id.* at 11-12.

## ANALYSIS

While disliked and sometimes ignored by those who believe everything should be negotiable at all times within the federal sector, the covered by doctrine serves the legitimate purpose of precluding endless renegotiation of matters already agreed upon by the parties. If a matter is covered by a prior agreement, the parties have no duty to bargain over subsequent proposals related thereto. *NTEU v. FLRA*, 399 F.3d 334, 337-38 (D.C. Cir. 2005); *Dep't of the Navy v. FLRA*, 962 F.2d 48 (D.C. Cir. 1992) (*Navy*). The covered by test states that parties have no duty to bargain mid-term over matters “expressly contained in” or “inseparably bound up with” a contract term. *U.S. Dep't of HHS, SSA, Balt., Md.*, 47 FLRA 1004, 1016-18 (1993). Bargaining agreements are intended to promote stability in the bargaining relationship in the Federal sector. *Id.* at 1018.

The Respondent is incorrect when it argues that a proposal for a flexible work schedule is covered by the master agreement. In fact, as asserted by the GC, the master agreement actually imposes a duty to bargain over such issues locally. When national level negotiations result in the delegation of matters to be bargained at the local level, the duty to bargain in good faith applies to the bargaining at the local level. *U.S. DOJ, FBP, Metro. Det. Ctr., Brooklyn, N.Y.*, 69 FLRA 44 (2015). Within their nationwide master agreement, AFGE and the BOP agreed to Article 18, which established the Hours of Work. However, Section (b) of that Article, left any modification of those established hours pursuant to adoption of a compressed and/or flexible work schedule to local level bargaining.

Consistent with that delegation, the Union and management at FCI Bastrop agreed in December 2014, that the hours of work for Financial Management employees at this particular BOP facility would be modified by the adoption of a compressed work schedule which bargaining unit employees within that department could voluntarily use at their election. Upon conclusion of that successful negotiation, the parties executed an MOU that formalized the hours of work to be performed within Financial Management at FCI Bastrop and the option to work a compressed work schedule was implemented in January 2015. R. Ex. 4.

The language of the local hours of work MOU executed by the parties specifically indicates that any employee who elected to work a compressed work schedule would be working a fixed work schedule and that no flexible tour of duty hours were available. *Id.* The MOU also gave the Respondent the right to determine if the employee's fixed schedule would begin at 6:30 a.m. or 7:30 a.m. *Id.*

Thus, a flexible work schedule was not only contemplated by the parties during local negotiation, the ability to obtain that form of work schedule was relinquished as part of obtaining the ability to work a compressed schedule. When a matter is covered by the CBA, the party has exercised its bargaining right. *Navy*, 962 F.2d at 57 (citing *Ador Corp.*, 150 NLRB 1658, 1660 (1965)). Further, when a negotiated agreement specifically deals with a subject, the parties have bargained about the matter. *Id.* Language within the MOU that establishes the inability to work a flexible tour of duty, coupled with the Respondent retaining the right to determine what hour the employee begins a fixed schedule on a compressed workday, evidences that the parties specifically considered and bargained away the use of a flexible work schedule as part of gaining the ability to work a compressed schedule. Therefore, the Union exercised its bargaining right during local negotiations and the bargaining obligation to negotiate over compressed and/or flexible work schedules required by the master agreement was satisfied by the local hours of work MOU. Thus, further negotiation over hours of work for Financial Management employees at FCI Bastrop is not required. The use of a flexible work schedule was addressed during local negotiation over hours of work and that subject is covered by the local hours of work MOU. *Id.*

Further indication that the Union negotiated away the right to obtain a flexible work schedule is demonstrated by the parties' agreement that the hours of work MOU would become permanent after a six month trial period. R. Ex. 4. The parties agreed that during the trial period, changes could be proposed by either party. *Id.* If the Union wanted to alter the hours of work MOU for Financial Management employees to give employees the ability to work a flexible schedule, that window of opportunity existed between January and July 2015. Having failed to request any further changes to the hours of work for Financial Management employees, the terms of the local hours of work MOU became permanent in July 2015, and any subsequent request to renegotiate hours of work for Financial Management employees is covered by that local MOU.

As recognized by the DC Court of Appeals, the purpose of the Statute is to provide the parties to a bargained agreement with stability and repose with respect to matters reduced to writing in the agreement. *Navy*, 962 F.2d at 59. Citing precedent from a string of earlier cases from the Authority and the courts, the Court reaffirmed that stability in the workplace is fostered by the requirement to adhere to specific conditions of employment when the conditions have already been mutually established in an agreement. *Internal Revenue Serv.*, 17 FLRA 731, 734 (1985); *Navy*, 962 F.2d at 59. In this case, the Union got its bite of the apple with respect to altering the hours of work for Financial Management employees via local agreement as required by the master agreement, and it would be counterproductive, and inefficient to require additional negotiations upon hours of work in an attempt to gain what it elected to forego to secure the earlier agreement.



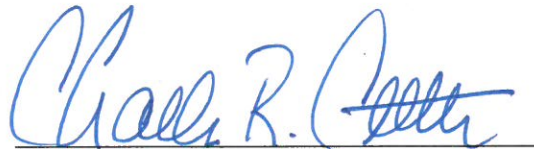
As such, the Respondent had no duty to bargain the Union's proposal that the hours of work for Financial Management employees at FCI Bastrop be negotiated yet again. Therefore, the Respondent did not violate § 7116(a)(1) and (5) of the Statute when it refused to negotiate over a new proposal related to hours of work, that was submitted well after the local hours of work MOU was finalized. Hours of work for the six bargaining unit employees working in Financial Management at FCI Bastrop were negotiated locally and if the Union wanted them to have the ability to work both compressed and flexible work schedules, it should have sought that during those negotiations or it should have raised that change during the six months the parties agreed that the agreement altering the master agreement's hours of work was subject to further negotiations. Once that time had passed, the hours of work for those bargaining unit employees was covered by the local agreement.

### CONCLUSION

The Respondent did not violate § 7116(a)(1) and (5) of the Statute when it declined to engage in additional local bargaining over the hours of work for Financial Management employees at FCI Bastrop.

Accordingly, the Respondent's Motion for Summary Judgment is **GRANTED**, and the General Counsel's Motion for Summary Judgment is **DENIED**.

Issued, Washington, D.C., July 28, 2017



CHARLES R. CENTER  
Chief Administrative Law Judge