

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF ARMY,
FORT CAMPBELL, KY
And

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2022

Case No. 21 FSIP 001

DECISION AND ORDER

BACKGROUND

This case was filed by the Fort Campbell, Kentucky, 101st Airborne Division (Agency), and concerns the negotiations of ground rules over the Successor Collective Bargaining Agreement (CBA) between the Agency and the American Federation of Government Employees, Local 2022 (Union).

The mission of Fort Campbell, the 101st Airborne Division (Air Assault) is to provide our Nation Air Assault capability to conduct forcible entry and other worldwide unified land operations in support of Combatant Commanders. Fort Campbell serves as a projection platform and premier training and development center for Air Assault Operations in the United States Army; home to the 101st Airborne Division (Air Assault), 5th Special Forces Group (Airborne), 160th Special Operations Aviation Regiment (Airborne), 52nd Ordnance Group (Explosive Ordnance Disposal), U.S. Army Medical and Dental Activities, Tennessee Valley District Corps of Engineers, and Veterinary Command.

AFGE, Local 2022 (Union) represents public and private sector bargaining unit civilian employees of the Fort Campbell Army Post. In terms of the federal civilian workforce, the Local 2022 represents all of the civilian employees on the installation, including hospital personnel and administrative personnel. The Union represents approximately 3,000 bargaining unit employees.

The parties are currently governed by a collective bargaining agreement that expired in June 2020. The terms of the existing CBA roll over until the parties reach agreement on a new

CBA. The Agency opened the negotiations with proposals regarding ground rules. The parties bargained the ground rules with and without the assistance of FMCS. FMCS closed the case and released the parties in September 2020. The Agency submitted their request for assistance on October 1, 2020. On November 10, 2020, the Panel asserted jurisdiction over the remaining provision. The Panel ordered the parties to a Written Submissions procedure. Both parties timely provided their responses.

ISSUE AT IMPASSE

There remains one issue in the ground rules negotiations concerning whether one party may unilaterally determine when CBA negotiations will meet virtually or telephonically rather than face-to-face.

Agency Proposal:

Negotiations meeting thereafter will be conducted face-to-face in alternating one-week sessions, with one week on follow by one week in which the parties will not meet. Negotiation meetings will be held Tuesday through Thursday during the week of negotiations from 1200-1530. Through mutual agreement, the Chief Negotiators may make changes to negotiation meeting schedules, negotiation meeting locations, and/or negotiation meeting platforms, including virtual or telephonic negotiation meetings. Negotiation sessions will be adjusted for Federal holidays, religious holidays, or installation closures.

Union Proposal:

August 6, 2020

Negotiations will occur in alternating one-week sessions, with one week on following by one week in which the parties will not meet. Negotiations will be held Tuesday through Thursday during the week of negotiations from 1200-1530.

The Parties recognize that ground rules must, at a minimum, be designed to further, not impede, the bargaining for which ground rules are proposed. Due to the COVID-19 pandemic, the increasing positive cases in the State of Tennessee, and the concern for the health and safety of all involved, negotiating sessions shall be virtual, until the pandemic has flattened to an acceptable level as determined by the Center for Disease Control.

Chief Negotiators may make changes to negotiation meeting schedules, negotiation meeting location, and/or negotiation meeting platforms, including face-to-face, virtual or telephonic negotiation meetings, as circumstances dictate. When providing the other party advance notice of a need for change, a reason will be provided. Negotiation sessions will be adjusted for Federal holidays, religious holidays, or installation closures.

Union Offered in its written submission on November 30, 2020:

Face-to-face meetings may be attended virtually at the option of the bargaining team members. With 7 days' notice from the attendee, the Agency will ensure virtual attendance logistics when negotiations are on Agency property.

POSITIONS OF THE PARTIES AND PANEL DETERMINATION

The parties are in agreement that the parties should meet face-to-face for negotiations when the circumstances are appropriate; however, when the circumstances are inappropriate (i.e., COVID-19 health and safety concerns), the Agency proposes that the parties meet virtually, but only by mutual agreement. The Agency argued that neither party should have unilateral authority to dictate or otherwise control whether negotiation meetings will be held face-to-face or virtually. The Agency stated that the parties met face-to-face through the ground rules bargaining between June and July 2020. The Union did not express concerns about meeting face-to-face until the Agency declared impasse and requested that the matter be moved to mediation. On July 15, the Union requested to suspend bargaining meetings due to a Union team member's exposure to COVID-19. The parties jointly agreed to suspend bargaining meetings for 1 week. The Agency shared this as an example on how their proposal can work effectively. The Agency argued that the Union's proposal is overly broad and, therefore, not agreeable because under the Union's proposal, one party can change the meeting to virtual by choosing not to come in person, without agreement of the other party; one party has the unilateral authority to determine what is appropriate and what is inappropriate. The Agency is concerned that the Union will invoke the change whether the circumstances are appropriate or not, and even in circumstances that are irrelevant to the current pandemic.

The Union, in its written submission to the Panel, revised its proposal to align with a proposal adopted by the Panel in 20 FSIP 009. The Union proposed that face-to face meetings may be attended virtually at the option of the bargaining team members. The Union's position is that the parties should have the option of protecting their own health and safety during the bargaining of this contract. The Union argued that their proposal best furthers the bargaining process. In response to the Agency's declaration that this ground rules bargaining, which was mostly face-to-face, is a good example on how these matters can be worked out mutually, the Union stated that the ground rules bargaining occurred only sporadically until pandemic shut downs in the state and 100% telework. The Agency resisted meeting virtually when the Union expressed concern about face-to-face meetings. After many discussions and emails, the Agency finally acquiesced to rescheduling the meetings just one week later. The Union argued that delays in bargaining could be avoided if the team members are allowed to join the negotiations virtually at their option.

The Panel has ordered an amended provision. The parties are in agreement to conduct bargaining sessions face-to-face under normal circumstances. However, with the uncertainties and work place disruptions caused by the COVID-19 Pandemic, it is certainly reasonable that some bargaining team members have concerns about meeting in a closed meeting room, and for some, traveling is a concern. To facilitate continuation of bargaining during the COVID-19

Pandemic, the parties should maximize flexibilities. The Panel orders the parties to adopt the following language:

Negotiations meeting thereafter will be conducted face-to-face in alternating one-week sessions, with one week on followed by one week in which the parties will not meet. Negotiation meetings will be held Tuesday through Thursday during the week of negotiations from 1200-1530. Due to the COVID-19 pandemic and concerns for health and safety, bargaining team members may attend negotiation sessions virtually. The Chief Negotiators will notify each other regarding any attendance changes due to COVID-19 concerns. Through mutual agreement, the Chief Negotiators may make other changes to negotiation meeting schedules, negotiation meeting locations, and/or negotiation meeting platforms. Negotiation sessions will be adjusted for Federal holidays, religious holidays, or installation closures.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provision as discussed above.



Mark A. Carter
FSIP Chairman

December 20, 2020
Washington, D.C.