

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF ENERGY SOUTHWESTERN
POWER ADMINISTRATION

And

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1002

Case No. 19 FSIP 017

DECISION AND ORDER

This case, jointly filed by the Department of Energy (DOE, Southwestern Power Administration (Agency) and the International Brotherhood of Electrical Workers (IBEW), Local 1002 (Union) on January 31, 2019, concerns negotiations over a successor collective bargaining agreement under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §7119.

Following an investigation of the Joint request for assistance, on April 3, 2019, the Panel asserted jurisdiction over some proposals and declined jurisdiction over some proposals. As for the proposals that the Panel determined to assert jurisdiction, under 5 C.F.R. §2471.6(a)(2) of its regulations, the Panel determined that the impasse over those proposals would be resolved through a Written Submission procedure. The parties timely submitted their Written Submissions to each other and the Panel.

BACKGROUND

The Southwestern Power Administration was established in 1943 by the Secretary of the Interior as a Federal Agency that today operates within the Department of Energy. The Agency maintains approximately 1,380 miles of high-voltage transmission lines and substations, serving over eight million end-use customers. Chartered on Oct. 25, 1919, the International Brotherhood of Electrical Workers, Local 1002 has represented employees at Southwestern since 1955 and currently represents approximately 60 bargaining-unit employees who operate and maintain the electrical transmission system. The impacted employees encumber positions such as Lineman, non-supervisory Foreman, Tree Trimmer and Electrician. These employees are

"prevailing rate employees" under 5 U.S.C. § 5342(a)(2) and, therefore, are covered by the Federal Wage System (FWS).

The Federal Wage System was developed to make the pay of Federal blue-collar workers comparable to prevailing private sector rates in each local wage area. Before the FWS, there was no central authority to establish wage equity for Federal trade, craft, and laboring employees. In 1965, President Johnson ordered the former Civil Service Commission to work with Federal agencies and labor organizations to study the different agency systems and combine them into a single wage system. Congress established the FWS by law in 1972. The goal of the system is to pay employees according to local prevailing rates. Agencies are responsible for conducting wage surveys, analyzing data, and issuing wage schedules under the policies and procedures prescribed by OPM.

Labor organizations play a role in the wage determination process by providing representatives at all levels of the wage determination process. Locally, the union with the most employees under exclusive recognition in a wage area designates one of the three members of each Local Wage Survey Committee. Labor organizations work with the Agency to collect wage data from private enterprise employers. Under the FWS, the employer bases the pay on what the private industry is paying for comparable levels of work in the local wage area.

BARGAINING HISTORY

The parties' CBA went into effect October 1, 2013 for a term of two years. In September 2015, the Union provided notice to the Agency that they would be reopening the CBA. Also, in September 2015, the parties reached agreement on the ground rules for negotiating the successor CBA. The parties commenced term bargaining in January 2016. The parties engaged in multiple negotiations between January 2016 and September 2018. The parties engaged in mediation with a Mediator from the Federal Mediation and Conciliation Services (FMCS) in November 2018, but the remaining issues were not resolved during that proceeding.

In November 2017, in response to a request from the Union, the Agency provided the Union with a written formal notice of fifteen specific provisions it believed were non-negotiable. The Union filed a negotiability appeal with the FLRA. During that process, the Agency withdrew its assertion of non-negotiability on three of those proposals. In July 2018, the Agency was notified that the Union had withdrawn its negotiability appeal. The parties continued to bargain. Under the current CBA, the Union must give the Agency 30 days' notice of its intent to file a ULP with the FLRA in order to try to resolve the issue informally. In accordance with this requirement, in November 2018, the Union sent the Agency notice of its intent to file a ULP. The Agency submitted a response to the Union in December 2018. On January 31, 2019, the parties jointly filed this request for Panel assistance over the impasse of 3 out of 20 remaining articles (5 issues) in the successor CBA. In February 2019, the Union

submitted its formal filing of ULP with the FLRA. Also, in February 2019, the Union formally requested that the Agency provide its declaration of non-negotiability to the Union in writing; the Union challenged the Agency's declaration by filing a new negotiability appeal with the FLRA.

During the Panel process, the Agency maintained that the Panel should decline to assert jurisdiction over Issues #4 – Working Foreman – Step Up and #5 – Off Property Storm Restoration – Pay Incentive because the Agency believed those issues were non-negotiable. The Panel determined that the Agency had presented a colorable duty to bargain claim and, therefore, determined that those matters are not properly before the Panel to resolve. As such, the Panel declined to assert jurisdiction over Issues #4 and #5. As for the remaining issues in dispute (#1 – Term of the Agreement; #2 – Pay Minimum Calculation; and #3 – Working Foreman – Definition of “Crew”), the Panel determined that it would assert jurisdiction and ordered the parties to resolve the impasse over those 3 issues through Written Submission.

PROPOSALS AND POSITION OF THE PARTIES

1. Term of the Agreement (Duration)

The terms of the last CBA had a duration of two years, beginning on October 1 with an ending date of September 30. Dating as far back as 1962, the agreement between the Agency and the Union has never had a term duration of more than four years. A shorter term has been the preference for the parties in the past because it has allowed the parties to better adjust to industry changes, including changes regarding compensation. During negotiations, the Agency proposed a seven-year term. The Agency later proposed a term of three or five years. The Agency's last offered language proposed a term of two years. The parties originally tentatively agreed to language that would effectuate the CBA until September 30, 2018 (providing for a 2-year duration period). When it became apparent that the agreement would terminate before negotiations were concluded, the parties revisited the subject. The parties had agreed in theory that the duration for the CBA would be 2 years upon execution of the CBA.

Agency Proposal:

Duration: This agreement shall become fully binding upon Southwestern and the Union once approved by the Secretary of Energy in accordance with 5 USC Chapter 71 and will remain in effect for two years from the date it becomes effective.

Alternatively:

Duration: This agreement shall become fully binding upon Southwestern and the Union once approved by the Secretary of Energy in accordance with 5 USC

Chapter 71 and will remain in effect through September 30 of the first calendar year that is at least two years after the effective date of the agreement.

It is the Agency's position that an Agreement of longer duration would benefit both parties. It would reduce the time and resources required to renegotiate the agreement in the future. It would provide longer-term stability for employees covered by the provisions in the agreement. It would ensure timely annual pay increases for bargaining unit employees and reduce the possibility of delays in processing such increases or the outright elimination of such increases. The Agency notes that these parties are in their fourth year of negotiations for this successor CBA.

During the mediation process, the parties tentatively agreed to a two-year duration for the Agreement, but that agreement was never formalized by the parties. While the Agency still believes it would be better to extend the duration to at least three years, or even five years, they proposed a two-year duration to honor the verbal understanding reached during mediation. The Agency offered two options. The first option would preserve the plain meaning of the parties' verbal understanding to a two-year duration by having the Agreement expire exactly two years after it becomes effective. The second option was an attempt to reconcile that verbal agreement to a two-year duration with the Union's stated desire to have the Agreement expire on a specific date, September 30.

Union Proposal:

Effective October 1, 2019 to September 30, 2021 (two-year agreement), this local Basic Labor Agreement shall become fully binding upon Southwestern and the Union when agreed to in accordance with the Union's policies and procedures, executed by the Administrator of Southwestern, and approved by the Secretary of Energy. This agreement shall remain in effect until 12 a.m., October 1, 2021.

In the past, the CBA had a duration of two years, beginning on October 1 with an ending date of September 30. The Union contends that the reason the parties didn't reach final agreement on that 2 year-duration prior to engaging the Panel is because the Agency conditioned that agreement on the Union agreeing that its proposal regarding Working Foreman Step Up Pay (which the Panel declined jurisdiction and is now before the FLRA on a negotiability appeal) was nonnegotiable. The Union wasn't willing to accept the Agency's negotiability assertion without opportunity to appeal to the FLRA for a determination. The Union asks the Panel to order the term of two years, which has been the status quo for the decades-long history of the agreement, with the term effective October 1, 2019 to September 30, 2021, to remain consistent with the parties past practice.

2. Pay Minimum Calculation

The Panel declined to assert jurisdiction over Issues #4 – Working Foreman – Step Up and #5 – Off Property Storm Restoration – Pay Incentive because the Agency presented a colorable argument that those issues were non-negotiable. Both of those issues were pay issues, which is normally outside the bargaining obligations for most Federal agencies. This Agency can, however, negotiate over some pay provisions because Section 704 of the Civil Service Reform Act of 1978 provides that federal employees can negotiate over pay provisions if they met certain criteria. Section 704(a) requires that the proposal: (1) pertain to prevailing rate employees, (2) was the subject of negotiations between the parties prior to 08/19/1972, and (3) was, at the time, in accordance with the rates and practices prevailing prior to 08/19/1972. Section 704(b) requires that the proposal: (1) involves pay or a pay practice, and (2) is in accordance with current prevailing practices in the relevant industry. The Agency claimed that Issues #4 and #5 were non-negotiable because they failed to meet one or more of the requirements of Section 704.

As it pertains to this proposal, the Agency agrees that Section 704 of the Civil Service Reform Act of 1978 applies to these employees (who are prevailing rate employees) and, therefore, there is a duty to bargain pay in accordance with current prevailing rates and practices. Because the parties had been engaged in negotiations for four years and, as a result, the pay rate had been frozen since 2015, the parties agreed to negotiate an interim pay agreement for Journeyman Linemen for 2017, and that pay rate would be retroactive for the prior three years. The parties met in October 2017 to negotiate an interim pay agreement while the CBA was still being negotiated. The parties reached agreement on the pay rate for Journeyman Linemen that would apply as of October 2015, October 2016, and October 2017, to be applied retroactively. The parties agreed that pay rates after October 2017 would be authorized in accordance with the final successor CBA.

Agency Proposal:

For the duration of this agreement only, once pay is set in accordance with the calculations described in Article 3.2, each bargaining unit employee will have \$0.25 added to his/her basic hourly wage rate. This adder to the basic hourly wage rate will expire on the expiration date of this agreement and not be renewed.

The Agency is willing to agree to a \$0.25 pay bonus added to the base wages to help ease the transition from the terminated premium pay practices in the expired CBA that will not exist in the successor CBA. According to the Agency, some employees who were receiving additional premium pay when engaged in certain activities will no longer receive that additional premium pay under the new CBA. The Union provided evidence that some of these premium pay practices had been in effect dating back to 1962. Therefore, the Agency is willing to offer this temporary monetary bonus on top of the negotiated base rate to help ease that transition.

However, the Agency is unwilling to agree to an adder or bonus that would extend beyond the expiration date of this successor CBA. The Union argued that the adder would help bring the base pay rate in line with competitors. In response to that argument, the Agency argued that the use of the adder was not intended for that purpose. It was not intended as a means to bring wages in line with the prevailing rate. That is already accomplished through the negotiated practice of annual salary surveys and pay adjustments.

Union Proposal:

... For the term of this agreement only, the basic wage rate schedule negotiated and issued shall be based on the arithmetical average of the top scale rate in effect October 1 of each fiscal year for the labor classification of Lineman (Electrical Power), or its equivalent, by City Utilities of Springfield, Sho-Me Power Electric Cooperative, Public Service Company of Oklahoma, Entergy Arkansas, and The Empire District Electric Company. An additional \$0.25 will be added to the basic wage rate. This adder to the basic hourly wage rate will not expire on the expiration date of this agreement.

As a collateral matter, during the negotiations, the parties negotiated over the companies to be included in the wage survey used to determine the basic wage rate. In its written submission, the Union asked the Panel to assist in confirming that agreement. The Agency argued in its rebuttal that it was not aware that the list was before the Panel. The list of the comparator companies was not jointly presented to the Panel, was not discussed during the investigation, and, was not accepted by the Panel as being at impasse. Therefore, it would not be appropriate for the Panel to make an order regarding the comparator companies.

During the negotiations, the parties also discussed the addition of a base pay adder to make up for the loss of a number of premium pay items the Agency has asserted are nonnegotiable. The Union notes that the employees will lose pay for environmental and/or hazardous pay, high altitude pay, protective clothing pay, journeyman-in-charge pay, and hot sticking pay, among others. The Union was seeking the adder of \$0.75 to help account for the loss in premium pay as well as ensure that pay was competitive with nearby companies. The Union argued that the lack of agreement between the parties was simply because the Agency continued to threaten the Union with a negotiability determination. The Union filed an unfair labor practice charge over that behavior. The Union asks the Panel to order the \$0.25 adder and for the adder to be renewable and not expire on the termination date of this successor CBA.

3. Working Foreman – Definition of “Crew”

At the time the parties filed their request for Panel assistance, there were two issues regarding Working Foreman: the definition of a “crew” and the circumstances in which an employee will be “stepped-up” (or assigned) into a Working Foreman position

resulting in additional pay. The latter part of the proposal was declined by the Panel and is now the subject of collateral proceedings outside the Impasse process; a negotiability dispute. As for the first part, involving the definition of "crew", that language was agreeable to the parties, but they continued to be in dispute over whether it constituted a stand-alone proposal. "Crew" is defined as 3 or more personnel, which includes a Working Foreman. Both parties agree with that part of the proposal. The agreeable language is only at impasse as a result of the Agency's declaration of nonnegotiable on the other part of the provision regarding the entitlement of pay for the step up assignment.

Agency Proposal:

For Working Foreman purposes, a crew is defined as three or more personnel, which includes a Working Foreman.

Union Proposal:

For Working Foreman purposes, a crew is defined as 3 or more personnel, which includes a Working Foreman.

PANEL DECISION

1. Term of the Agreement (Duration)

The second option offered by the Agency is consistent with the requirements of the Statute (i.e., executed agreement is binding upon the parties in accordance with 5 USC Chapter 71), reconciles the verbal agreement to a two-year duration, meets the Union's desire, to have the Agreement expire on a specific date (i.e., September 30), and meets the Agency's desire of insuring that the duration is at least 2 years.

Duration: This agreement shall become fully binding upon Southwestern and the Union once approved by the Secretary of Energy in accordance with 5 USC Chapter 71 and will remain in effect through September 30 of the first calendar year that is at least two years after the effective date of the agreement.

2. Pay Minimum Calculation

The purpose of the adder is to mitigate the impact of the negotiated policy changes with some of the premium pay incentives. It is not, as the Union argued, intended to be a part of the establishment of the wage schedule; the wage rates are addressed through the wage survey process. Based upon the final proposals offered, both parties agree that the amount of \$0.25 per hour provides the appropriate transition for the employees. That \$0.25 adder will remain in effect for the duration of this CBA.

The parties are free to negotiate a new bonus, new premium pay provisions, and duration when they renegotiate this successor CBA. As evident by the negotiation of an interim pay agreement during the negotiation of this successor CBA, the parties have demonstrated that where appropriate, the parties understand that they are free to renegotiate an interim agreement regarding the terms of the adder, if they mutually agree.

For the duration of this agreement only, once pay is set in accordance with the calculations described in Article 3.2, each bargaining unit employee will have \$0.25 added to his/her basic hourly wage rate. This adder to the basic hourly wage rate will expire on the expiration date of this agreement or upon terms mutually agreed otherwise.

3. Working Foreman – Definition of “Crew”

There is no remaining dispute over this part of this proposal. The Panel orders the parties to adopt the language as proposed by both parties.

For Working Foreman purposes, a crew is defined as 3 or more personnel, which includes a Working Foreman.

ORDER

Pursuant to the authority vested in 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 parties to adopt the following to resolve the impasse:

- Proposal 1 – The Panel orders the parties to adopt the Agency Proposal.
- Proposal 2 – The Panel orders the parties to adopt a modified Agency Proposal.
- Proposal 3 – The Panel orders the parties to adopt the proposal as offered by both parties.

By direction of the Panel.

A handwritten signature in blue ink, appearing to read 'Mark A. Carter', with a long horizontal line extending to the right.

Mark A. Carter
FSIP Chairman

May 1, 2019
Washington, D.C.