

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

UNITED STATES DEPARTMENT OF  
VETERAN AFFAIRS,  
VETERANS HEALTH ADMINISTRATION,  
VA MARYLAND HEALTHCARE SYSTEM

and

NATIONAL ASSOCIATION OF GOVERNMENT  
EMPLOYEES,  
R3-19, SEIU LOCAL 500

Case No. 24 FSIP 069

**ARBITRATOR'S OPINION AND DECISION**

**BACKGROUND**

This case arises pursuant to §7119 of the Federal Service Labor Management Relations Statute (the Statute). It was filed by the Department of Veterans Affairs, Veterans Health Administration, VA Maryland Healthcare System (Agency or Management) and concerns a proposed schedule modification for 6 bargaining unit employees at a Veterans Affairs (VA) facility in Baltimore, MD. The employees are represented by NAGE, Local R3-19 (Union) that represents primarily Title 38 nurses and nurse practitioners. The parties are governed by a national collective bargaining agreement (CBA) that renews every 3 years.

**PROCEDURAL AND BARGAINING HISTORY**

On January 18, 2024, the Agency provided notice that it wished to modify the coding of certain duty hours for bargaining unit nurses in the post anesthetic care unit (PACU) at its primary facility in Baltimore, MD. Six nurses in the unit work an alternative work schedule (AWS) known as a 72-8 (a seventh nurse works a traditional 5/8 schedule). Under this AWS schedule, the six nurses work three twelve hour shifts one week and then work three twelve hour shifts plus a single eight hour shift the other week of the pay period. The employees, then, normally work six twelve hour shifts in a pay period. Currently, for pay periods with a Federal holiday, the holiday is coded as one of the twelve hour shifts. Thus, during such pay periods the employee works only five twelve hour shifts. There is no written AWS agreement as these employees were placed onto AWS by management a number of years ago. The aforementioned January 18<sup>th</sup> notification stated that the

Agency intended to now require the nurses to code Federal holidays as an eight hour shift rather than a twelve hour shift. Thus, during pay periods with Federal holidays, the nurses would have to work six twelve hour shifts as they normally would in any pay period. However, there would be no other changes, and the employees would still work 80 hours in a pay period.

The Agency's Notice of Change gave the reasons for wanting to make the change as:

The practice of self-scheduling the 12-hour shift as Holiday excused is financially wasteful. BUEs were paid an additional 272 hours of holiday excused for FY 2023. In addition to the extra holiday hours, overtime is paid to cover staff shortages during holiday weeks. Staff would not be required to stay for unscheduled overtime or be subject to mandated overtime if staffing was available.<sup>1</sup>

The Union objected to the change, so the parties turned to negotiations. The parties had several bargaining sessions in the spring of 2024 and two full mediation sessions with Federal Mediation and Conciliation Services in June 2024. The parties also had a brief mediation session on July 11, 2024, after which the mediator released the parties from mediation because they could not reach agreement. The Agency subsequently sought assistance from the Panel.

The Panel voted to assert jurisdiction and to resolve the matter through a mediation-arbitration. On December 10, 2024, I conducted the foregoing proceeding. Because the parties were unable to resolve the remaining disputed issue, the proceeding advanced to arbitration where the parties agreed to argue the remaining issue on written briefs. On December 16, 2024, the parties submitted post hearing briefs. The record is now closed.

## **ISSUE**

The only remaining issue concerns coding of holiday pay periods. Specifically, the parties disagree whether Federal holidays should be coded as twelve hour or eight hour days.

### **I. Agency Position**

The Agency proposes the following:

- The Agency is proposing that on each Holidays, 4 of the BUEs will schedule their 8-hour shift, the remaining 2 will schedule their 12-hour shift.

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<sup>1</sup> Agency Exhibit 3, Notice of Change

- This will rotate each Holiday based on seniority and will be selected during annual leave solicitation.
- The Agency maintains the right to bargain changes to the Alternative Work Schedule (AWS) in accordance with the VA/NAGE Master Agreement, if changes need to occur.<sup>2</sup>

The Agency offers a compromise that permits two of the six impacted bargaining unit employees to code their holiday as twelve hours per pay period with a Federal holiday. The remaining four employees would code their holiday as eight hours. To the Agency, the biggest problem with the status quo is that, by permitting employees to code twelve hours for a Federal holiday instead of eight, the Agency is paying for four additional hours per employee per holiday and paying for additional overtime hours as needed during those pay periods. Daily staffing requirements in the PACU department – or PAR – require five employees staffed per day.<sup>3</sup> PACU already has one employee on a traditional eight hour schedule; the Agency's proposed schedule would add 4 more employees, thus satisfying the PAR requirements and still permitting some employees to code holidays as twelve hours.

According to the Agency, the Union's offer of permitting three employees to code holidays as twelve hours instead of two employees as suggested by the Agency still creates staffing issues. To that end, the department would still be paying for 12 hour holidays for the three nurses who coded twelve hours; the Agency's proposal would at least diminish this number and meet PAR. Additionally, the Agency notes this unit is the *only* unit it is aware of that has this schedule. The schedule goes beyond the established VA Work Life balance initiative and creates an inequity.<sup>4</sup>

Finally, the Agency argues that the Union's analysis of overtime (discussed below) is misplaced. The issue arising from the schedule is that employees are earning four extra hours of straight holiday excused pay per holiday. Whether overtime arises or not is immaterial to the root problem: the current schedule causes 264 hours of lost productive time annually.<sup>5</sup>

## II. Union Position

The Union offers the following proposal:

- Three BUEs will be scheduled 12 hours Holiday Excused and three BUEs will be scheduled for 8 hours holiday excused.

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<sup>2</sup> Agency Final Offer at 1.

<sup>3</sup> Agency Brief at 1.

<sup>4</sup> Agency Brief at 2.

<sup>5</sup> *Id.* at 2-3.

- Employees will continue to self-schedule, and choose which holidays are 8 or 12 hour HEX consistent with Seniority as described in the Master Agreement Article 60.
- This will be effective 30 days after both parties agree to the proposal.<sup>6</sup>

The Union's proposal is similar to the Agency's proposal, but for each federal holiday, it permits *three* employees to code the holiday as twelve hours instead of eight hours. The other three employees would code an eight hour holiday.

The current practice of allowing all 6 employees to code holidays as twelve hours is established past practice for nearly 15 years and the Agency has offered little meaningful justification for altering it. According to data the Union reviewed, it found no correlation between holiday leave and overtime usage because the latter was caused by other factors, e.g., staff shortages.<sup>7</sup> Even with adequate staffing, i.e., 7 full time nurses, the Union found that staffing still averaged only 4.64 nurses for the Agency's PAR levels.<sup>8</sup>

Under the proposal offered by the Union, employees who code twelve hours would ultimately spend 396 hours in federal holiday status (three employees times twelve hours, multiplied by eleven Federal holidays) and employees who code eight hours for federal holidays would utilize 264 holiday hours. Thus, a total of 660 holiday hours would be used under the Union's proposal.<sup>9</sup> By contrast, the current practice results in 792 total hours of holiday usage. So, the Union's proposal is actually a reduction of hours.

Finally, as a practical matter, the Union's proposal creates scheduling balance because three employees would use twelve hour holiday coding while three would use eight hour holiday coding. According to the Union, this provides an easier scheduling situation for management. Additionally, employees who get to use twelve hours for the holiday would have to use less personal leave as a result.

### **III. Conclusion**

I will impose the Union's final offer to resolve the dispute. The status quo is that for every pay period with a Federal holiday, the bargaining unit employees of the PACU are permitted to code a Federal holiday as a twelve hour day. This amounts to 792 hours of straight holiday excused pay being utilized on an annual

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<sup>6</sup> Union Final Offer.

<sup>7</sup> Union Brief at 1-2.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 4, 5.

basis, which has been standard practice for over 14 years. The Agency seeks to alter this practice. Therefore, it is the Agency's burden to provide evidence of a need for the proposed change. The Agency has not met this burden. In this regard, to the extent the Agency offered any rationale for the change, it would seem that the alleged "problems" have been in existence since the inception of the challenged schedule.

The Agency's primary issue is that the Agency pays for four more hours of holiday excused pay for these employees for each pay period with a Federal holiday than it would pay if the holidays were scheduled as eight hour shifts. Yet, the Agency would have recognized this to be the result when it first decided to put employees on this schedule. There must have been other Agency interests that counterbalanced or outweighed this issue when the decision was first made to implement the status quo arrangement. The Agency has failed to articulate a change in circumstances to justify reexamination of the issue at present.

Other arguments offered by the Agency were not supported by evidence and were not persuasive. For example, it argues that the current situation is inequitable because this is the only team with the ability to self-schedule a 12-hour straight Holiday excused shift. But the Agency has failed to offer evidence about the types of schedules available to and utilized by other employees. Thus, I am unable to conduct an appropriate comparison.

The Agency asserts that its final offer meets the required PAR of 5 nurses. However, there is no evidence that the Agency actually staffs the PACU to this level. The Union has asserted, and the Agency has not rebutted, that even with 7 full time nurses the actual PAR has averaged closer to 4.64.<sup>10</sup>

The Agency submitted overtime evidence in its Exhibit 1, but it discounts overtime usage as a core interest in its brief.<sup>11</sup> The overtime evidence submitted by the Agency is only for weeks containing federal holidays. Therefore, it cannot form the basis of a determination that pay periods with holidays require more overtime hours to be assigned than other pay periods. Overtime, including the need for mandated overtime, was one of the rationales for the proposed change provided by the Agency in the Notice of Change, yet there is no evidence in the record concerning any employee being required to work mandatory overtime due to a federal holiday or for any other reason.

There also has been no evidence provided to support that this coding of holidays has resulted in an inability to staff the unit properly or to provide quality care to veterans.

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<sup>10</sup> Union Brief at 2, bullet 2.

<sup>11</sup> Agency Brief at 2.

The Agency also claims that the Union's reliance upon overtime figures is misplaced. The issue, according to the Agency's Brief is that employees on the team are earning four extra hours of straight holiday excused pay per holiday.<sup>12</sup> The Union's actual final offer reduces the "extra" hours of straight Holiday excused pay significantly: with three employees coding twelve hours and three employees coding eight hours, there are 660 total hours of holiday pay utilized annually. By contrast, under the status quo, there are 792 holiday hours. The Agency's final proposal reduces this number to 616 hours. This is a difference of 44 hours between the parties' final offers. In my view, the Agency has not justified moving further from the status quo.

The Union's final proposal acknowledges the status quo to a greater extent than the Agency's. In this regard, 50% of the impacted employees would continue to utilize the current practice for each applicable pay period. Thus, its proposal is closer to what was originally envisioned by the parties. Additionally, the Union's proposal acknowledges the Agency's stated concerns/interests. To that end, the Union's proposal reduces the number of employees who may avail themselves of twelve hours of holiday excused pay in order to more closely meet the Agency's stated interests.

### **ORDER**

Pursuant to the authority vested in me by the Federal Service Impasses Panel under the Section 7119 of the Statute, I hereby order the parties to adopt the Union's language outlined herein to resolve this impasse with one modification. The last bullet point will be removed to reflect that the language was not mutually agreed upon. Thus, the language reads as follows:

- Three BUEs will be scheduled 12 hours Holiday Excused and three BUEs will be scheduled for 8 hours holiday excused.
- Employees will continue to self-schedule, and choose which holidays are 8 or 12 hour HEX consistent with Seniority as described in the Master Agreement Article 60.

*/Pamela Schwartz/*

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Pamela Schwartz  
Arbitrator

January 3, 2025  
Washington, D.C.

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<sup>12</sup> Agency Brief at 2.