

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

U.S. DEPARTMENT OF THE AIR FORCE,  
JOINT BASE ELMENDORF-RICHARDSON,  
ALASKA

Case No. 19 FSIP 068

And

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1101, AFL-CIO

**DECISION AND ORDER**

This case, filed by the U.S. Department of the Air Force, Joint Base Elmendorf-Richardson, Alaska (Agency) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, concerns a dispute over the parties' successor collective bargaining agreement (CBA). The Agency's mission is to execute agile combat support to enable and sustain lethality. The American Federation of Government Employees, Local 1101, AFL-CIO (Union) represents a bargaining unit consisting of approximately 1,099 Wage Grade employees that are mostly blue-collar workers. The parties' current CBA became effective on March 4, 2013, for a three-year term and continues to remain in effect until the parties reach agreement over a new CBA.

**BACKGROUND AND PROCEDURAL HISTORY**

On December 4, 2015, the Agency provided the Union notice of its intent to renegotiate the CBA. The parties negotiated ground rules from January 2016 to May 2016. After agreeing to ground rules in May, the parties held 65 negotiation sessions and reached agreement on 18 articles from May 2016 to November 2018. The parties then met with the Federal Mediation and Conciliation Service (FMCS) Mediator Tom Melancon five times to mediate 19 articles from February 2019 to April 2019. During mediation, the parties resolved several articles; however, because they were unable to reach a complete agreement over their successor CBA, Mr. Melancon released the parties from mediation on April 25, 2019.

On May 10, 2019, the parties filed a joint request for Panel assistance over the remaining articles in dispute in Case No. 19 FSIP 042. During the investigation of that case, the parties entered into an agreement to return to mediation and withdraw the request for Panel assistance. Thereafter, the parties engaged in mediation with Mr. Melancon for four days in August 2019. The parties were able to resolve three articles in dispute, but could not reach a full agreement over the successor CBA. On August 15, 2019, the Agency filed a second request for Panel assistance in the instant case over Articles 2; 5; 10; 11; 12; 30; 31; and 38. During the investigation of the case, the parties either resolved or withdrew from the Panel's consideration Articles 10; 11; 12; 30; 31; and 38.

On October 23, 2019, the Panel asserted jurisdiction over Article 2, Section 2.3 and Article 5, Section 5.2.1. The Panel directed the parties to resolve the issues through a Written Submissions procedure. The Panel also afforded the parties an opportunity to submit rebuttal arguments. The parties timely provided their written submissions; however, neither party submitted a rebuttal statement. During the Written Submission phase of the Panel's proceedings, the parties resolved Article 5, Section 5.2.1. Therefore, the only issue that must be addressed by the Panel is Article 2, Section 2.3.

### **PROPOSALS AND POSITIONS OF THE PARTIES**

#### Agency's Final Offer

All Memoranda of Agreement (MOA) and Memoranda of Understanding (MOU) signed prior to the effective date of the CBA should be null and void unless otherwise specified in this agreement.

The Agency would like to terminate all agreements in effect prior to the execution of the successor CBA. The Agency argued that after a new agreement is reached, the local parties should start fresh without supplemental agreements continuing to remain in effect from the prior CBA that have no relevance or conflict with the agreed upon terms in the new CBA. The Agency stated that the termination of MOAs and MOUs does not include agreements made concerning flexible and compressed work schedules. The Agency would first negotiate with the Union prior to terminating any work schedules.

During the parties' negotiations, the Agency asserted that the Union provided the Agency with a binder of over 100 MOAs/MOUs.

However, some of the agreements were unsigned drafts and agreements over processes no longer used. For example, the Agency stated that the Union presented it with an agreement over parking at the facility; however, because the terms of that agreement were revised many times, it was no longer valid. The parties met to discuss the Agency's concerns, and as a result, the Union whittled the agreements down to 37 documents that it wanted referenced in the CBA as binding agreements. The Agency stated that there were still several documents that were unsigned and no longer applicable. Therefore, the Agency asked the Union to meet again to determine which agreements were still in effect and which ones the Union would like to include in the new CBA. The Agency indicated that the Union was not interested in meeting and that it wanted all 37 documents included in the CBA. Based on that, the Agency moved forward with its proposal to terminate existing agreements that were executed prior to the effective date of the new CBA.

#### Union's Final Offer

Any prior benefits, practices and/or memoranda of understanding which were in effect on the effective date of this Agreement at the level recognition, shall remain in effect unless superseded by the new agreement or in accordance with 5 U.S.C. Chapter 71. The Agency may request to renegotiate any past MOU/MOA outside this CBA and its Articles in accordance with statute.

The Union argued that any benefits, past practices, MOAs, and MOUs currently in effect should continue to remain in effect unless they conflict with the successor CBA or the Statute. To support its position, the Union stated that many MOAs and MOUs cover the safety of its employees and its customers, such as the wearing of uniforms, use of cell phones, driver's licensing, and training. Others include such topics as overtime and flexible and compressed work schedules. The Union asserted that the termination of these agreements will disrupt Agency operations, impact employees' conditions of employment, and violate statutes.

The Union argued that during the negotiations, it provided the Agency with 36 agreements that were signed, dated, and relevant that it wished to remain in effect; however, the Agency never provided the Union counter-proposals or a reason for wanting to terminate those agreements. Therefore, because the parties were unable to engage in a discussion over the 36 documents, the Union added the last sentence to its offer to permit the Agency an opportunity to renegotiate agreements that carry over to the new CBA.

## CONCLUSION

Having carefully considered the evidence and arguments presented in support of the parties' positions, the Panel will impose its own language for the parties to follow. The heart of the dispute centers around whether all prior agreements will be terminated, or only agreements that conflict with the new CBA. The Agency proposes to terminate all MOAs and MOUs signed prior to the effective date of the new CBA; whereas, the Union proposes to terminate only MOAs and MOUs that conflict with the new CBA.

The Union appears to argue that the parties did not sufficiently negotiate over its proposal and that the Agency is obligated to engage in negotiations under the Statute. The investigation revealed that the parties engaged in dozens of negotiation and mediation sessions and reached agreement over several articles. It strains credulity that the Union is only now claiming that the parties did not engage in a sufficient amount of negotiation when the record indicates otherwise. It is understandable that the Union is opposed to the Agency's proposal; however, the obligation to bargain in good faith under the Statute does not contemplate endless bargaining between parties.

The Union further argued that terminating agreements in effect that do not conflict with the new CBA will disrupt Agency operations, harm bargaining unit employees, and violate the Flexible and Compressed Work Schedules Act, codified at 5 U.S.C. § 6120 et seq. The Union is correct that the Agency must negotiate the termination of a flexible or compressed work schedule with the Union. However, the Agency has indicated that its proposal is not an attempt to circumvent its obligation to negotiate under the Statute or the Work Schedules Act. Other than general assertions, the Union has not sufficiently articulated the benefit in continuing to keep current agreements in place.

Turning to the Agency's arguments, it too did not sufficiently articulate why it needs to terminate all agreements in effect and why it would be harmed by keeping agreements intact that do not conflict with the terms of the new CBA. The Agency tried to defend its proposal by stating that some of the agreements presented to the Agency during bargaining were unsigned and no longer applicable; however, the Agency did not provide any supporting evidence to corroborate this assertion. The Union did present the Panel with some of those agreements, all of which were executed. Whether these agreements are a representative sample, and whether

the agreements are applicable, the Panel is unable to conclude from either party's position statement.

Based on the parties' submissions to the Panel, neither party satisfied their burden of explaining the need for their proposal. Because the Panel is unable to determine which agreements are in effect, and which agreements are relevant and do not conflict with the new CBA, the Panel will impose language that requires the parties to be bound by a single agreement. This approach is consistent with prior Panel decisions and will provide for a more effective and efficient collective bargaining relationship between the parties.<sup>1</sup> If the parties are so inclined and it is needed, the parties may voluntarily execute agreements after the new CBA becomes effective that do not conflict with the CBA and the law.

### 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 language to resolve the impasse:

All past practices, Memoranda of Agreement (MOA), and Memoranda of Understanding (MOU) will terminate upon the execution of the new CBA. After the CBA becomes effective, the parties may execute new agreements that do not conflict with the CBA and are consistent with law.

By direction of the Panel.



Mark A. Carter  
FSIP Chairman

January 13, 2020  
Washington, D.C.

15844979.1

---

<sup>1</sup> See, e.g., 19 FSIP 031, *HHS and AFGE, Local 3601* (2019).