



UNITED STATES
FEDERAL SERVICE IMPASSES PANEL

WASHINGTON, DC 20424-0001

SENT VIA EMAIL WITH HARD COPY TO FOLLOW

November 15, 2018

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RE: U.S. Department of Health and
Human Services
and
National Treasury Employees Union
Case No. 18 FSIP 077

All:

After due consideration of the Agency's request for assistance in the above-referenced case regarding a Successor Collective Bargaining Agreement, the Panel determines, in accordance with its regulations, 5 C.F.R. § 2471.6(a)(2), to **assert partial jurisdiction over some issues and to decline jurisdiction over others.**

As to the latter category of issues, in an August 31, 2018, submission, the Union argued to the Panel that the Agency's proposals for Articles 2, 3, 8, 35, 45, and 46 concern permissive topics of bargaining that the Union has no obligation to bargain over. The Agency disagreed with the Union's assertion in a September 27, 2018, submission. It relied primarily upon the decision of the Federal Labor Relations Authority (FLRA) in *NTEU and U.S. Customs Serv.*, 64 FLRA 156 (2009) to argue that the Agency's proposals actually touch upon mandatory topics of bargaining. However, the Panel's review of this decision and the Agency's arguments as it relates to these Articles do not establish the presence of "substantively identical" proposals as required by the FLRA's decision in *Commander Carswell, Air Force Base, Texas and AFGE, Local 1364*, 31 FLRA 620 (1988). Accordingly, the Panel declines jurisdiction over these 6 Articles so that the parties may resolve the foregoing bargaining obligation disputes in the appropriate forum.

As to all other remaining Articles, the Panel will assert jurisdiction over them and direct the parties to **resume negotiations**, with the assistance of the Federal Mediation and Conciliation Services (FMCS), during a period not to exceed 30 calendar days following FMCS's appointment of a Commissioner who will be named by FMCS shortly. The Panel requests that FMCS inform the Panel and the parties when it appoints that individual. The Panel further requests that the appointed Commissioner notify the Panel if either party declines to participate in bargaining efforts. Similarly, if the Commissioner believes bargaining efforts have concluded prior to the expiration of the 30-day period, the Panel requests that he or she release the parties from further efforts and inform the Panel and the parties.

If the parties are unable to voluntarily resolve their dispute, and within 5 calendar days of either the end of the aforementioned 30-day period or the Mediator's referral to the Panel, whichever occurs first, the parties shall transmit to the Panel their final written offers. They shall also submit written positions in support thereof. However, the parties will be permitted no more than 1 double-spaced page *per remaining disputed Article*. The Panel will then likely resolve those disputes by utilizing an Article-by-Article selection process. That is, the Panel is likely to select one party's full Article *without further modification*.

The parties are urged to cooperate fully with FMCS in attempting to reach a voluntary settlement of this dispute.

By direction of the Panel.

Sincerely yours,



Mark A. Carter
Chairman

cc: Acting Director Richard Giacolone, FMCS
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