



REFERENCE GUIDE

THE MEANING OF A “FULL FORCE AND EFFECT” CLAUSE IN COLLECTIVE BARGAINING AGREEMENTS

DISCUSSION

The term “full force and effect” is commonly found in the Duration Clause of a Collective Bargaining Agreement. However, the presence or absence of this specific phrase does not make the contract, as a whole, more or less binding. The legal definition of the phrase is:

Force and Effect, n. Legal efficacy<mailing the brief had the force and effect of filing it with the clerk>. The term is now generally regarded as a redundant legalism. Black’s Law Dictionary, seventh edition, 1999.

Based on the above definition, the negotiated contract is a legally binding document whether or not it contains the term “full force and effect” as part of a clause. The legal and binding basis for all negotiated collective bargaining agreements is established in The Federal Service Labor–Management Relations Statute. The statute creates a binding document that is mutually agreed upon by both parties in 5 U.S.C. § 7114, Representation Rights and Duties. The term “full force and effect” is simply used as a clarifying phrase to reinforce the notion that the negotiated contract binds the two parties to a written document. For example, a contract may read:

“This Agreement shall remain in full force and effect for a period of three (3) years from the date of approval by the Department of Defense.”

“Full force and effect” can easily be replaced with the term “legally effective”. In light of this, many Human Resource Specialists and Managers do not realize that all terms that are contained in the negotiated agreement are legally binding and effective on the parties involved.

Savings Clause





Another common location for the phrase, “full force and effect”, is in a Savings (Severability) Clause. Many contracts include a savings clause, which is meant to ensure that the contract remains enforceable even if part of the contract is later found invalid.

For example:

If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.

In the absence of a savings clause, it is possible that if a single clause is held invalid, the entire contract will also be rendered invalid. See *Department of the Interior, National Park Service, Colonial National Historical Park, Yorktown, VA and NAGE, Local R4-68, 20 FLRA 537*. Savings clauses are important to keep in mind when negotiating a contract. Just because one section is unenforceable does not mean that management wants to invalidate an entire contract that may contain articles on other important provisions such as overtime assignment, uniform allowances and grievance procedures. A savings clause is needed in the contract so that this type of situation does not occur during the Agency-head review process required under 5 U.S.C. § 7114(c).

Renegotiating a Contract

Another common area of contract negotiations in which the specialist will encounter the “full force and effect” clause is during the renegotiation of a bargaining agreement. Many unions will request that the existing contract stay in “full force and effect” until a new agreement is concluded and approved. The FLRA has noted that it is the duty of the parties upon expiration of the agreement to continue the mandatorily negotiable provisions of the expired contract to the maximum extent possible. However, those provisions that are negotiable only at the election of the parties can be unilaterally terminated upon expiration of the contract. For example:

If negotiations fail to achieve a settlement by the expiration date, provisions of this Agreement shall, consistent with applicable law, remain in full force and effect until a new Agreement becomes effective.

The example above shows a contract clause that would require continued adherence to agreement terms over which the Agency was obligated to bargain, a requirement already imposed on the Agency by the Statute. However, the proposal would also bind the Agency to provisions covering permissive subjects of bargaining. The FLRA has found that either party may reject a contract clause that involves a permissive subject of





bargaining when the contract expires. The agency cannot be forced to bargain over a waiver of this right, but could agree to do so voluntarily. See Merit Systems Protection Board Professional Association and Merit Systems Protection Board, Washington, DC, 30 FLRA 852. See NAGE, Locals R12-122 and R12-222 and Department of Defense, Washington National Guard, Tacoma, WA 38 FLRA 295.

The Authority also has determined that provisions that require a contract to remain in “full force and effect” until a new contract has been completely negotiated does not impede an Agency from complying with Government-wide regulations which have come into effect during the term of the agreement. The Authority found that because the provisions of a contract allowed either party to seek renegotiation of the agreement, the agency had sufficient opportunity to comply with the regulation. Nothing in this type of provision prevents the Agency-head from reviewing a newly negotiated agreement or one that the parties have mutually agreed to extend. Agency-head review is not precluded by the provision and the Agency is not deprived of the opportunity to bring the agreement into conformance with governing regulations. If the Agency provides appropriate notice, all matters can be reopened and subject to renegotiation.

The Authority ruled that provisions of a renewed agreement do not operate to override government-wide regulations existing on the effective date of the new term of the collective bargaining agreement. The enforceability of a government-wide regulation occurs by the operation of law when the agreement expires prior to its automatic renewal. It has been held that arbitrators should give effect to provisions of agreements negotiated prior to the issuance of government-wide regulations, except for regulations (taking precedence over contrary negotiated provisions) that implement 5 USC 2302, for the duration of the contract but not during any extensions of or renegotiations of the contract. See AFGE, Local 1931 and Department of the Navy, Naval Weapons Station, Concord, CA 32 FLRA 1023, AFGE, Local 2317 and Marine Corps Logistics Base, Non-appropriated Fund Activity, Albany, GA, 29 FLRA 1587, and Department of Defense, Defense Contract Audit Agency, Central Region and AFGE, Local 3529, 37 FLRA 1218.

CONCLUSION

Negotiators beware! It is important to understand the impact of any contract language since what is agreed to at the bargaining table is legally effective once the negotiated agreement is executed and approved through agency-head review.





Human Resources Specialists and Managers also have to beware of including the “full force and effect” in any clause that concerns renegotiating the contract once it has expired. Remember, the Agency is not required to bind itself to the expired contract until a new contract is negotiated but the Agency can elect to do so. By placing the terms “full force and effect” in the clause, the Agency has made the election. However, the “full force and effect” does not impede an Agency from implementing government-wide regulations during the extension or renegotiation period.

If you have any questions concerning this reference guide, please contact the Field Advisory Services, Labor Relations Team, at (703) 696-6301, Team 3. Our DSN is 426-6301.

References:

Chapter 71 of Title 5, United States Code (U.S.C.), "The Federal Service Labor-Management Relations Statute"
Federal Labor Relations Authority Decisions
Federal Court Case Decisions