



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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January 23, 2026

CBCA 8713-FEMA

In the Matter of INSPIRA MEDICAL CENTERS, INC.

Wendy Huff Ellard of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS; and Danielle M. Aymond of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Baton Rouge, LA, counsel for Applicant.

Margaret Bushko and Rebecca J. Otey, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **RUSSELL**, **SHERIDAN**, and **SULLIVAN**.

**SULLIVAN**, Board Judge, writing for the Panel.

Inspira Medical Centers, Inc. (Inspira or claimant) sought to arbitrate the denial of its request for public assistance funds for premium pay costs incurred during the COVID-19 pandemic. The Federal Emergency Management Agency (FEMA) denied the request because the premium pay was not paid pursuant to a policy issued prior to the declaration of disaster in 2020. For the following reasons, we agree with FEMA's determination and deny Inspira's request for public assistance.

BackgroundClaim Chronology

The President issued a major disaster declaration for New Jersey in March 2020. Request for Arbitration (RFA), Exhibit 1 at 1.<sup>1</sup> Inspira is a non-profit healthcare organization that operates four hospitals and numerous other health care facilities in southern New Jersey. RFA at 6. Pursuant to FEMA policies covering costs incurred for medical care during the disaster, Inspira sought public assistance funds to reimburse it for straight time, overtime, and premium pay that it paid to its nursing staff. Inspira submitted two claims, each covering different time periods, seeking a total reimbursement of more than \$30 million. RFA at 12-13; Exhibits 1 at 1, 2 at 1. FEMA determined that Inspira incurred \$9.2 million in eligible straight time and overtime costs. RFA at 13. But, FEMA determined that Inspira's premium pay costs were not incurred pursuant to a policy that predated the disaster and partially denied the claims on this basis. Exhibits 1 at 4-5, 2 at 4. The amount that FEMA denied totaled \$13 million. Exhibits 1, 2.

Inspira appealed FEMA's determinations on the two claims. Exhibits 3, 4. In the appeal on the first claim, FEMA determined that Inspira could be reimbursed an additional \$3500 paid to nurses that acted as floaters during the disaster. Exhibit 5 at 3. FEMA found that these costs were incurred pursuant to the terms of the contract between Inspira and the nurses' union. *Id.* FEMA denied the rest of this appeal and denied the appeal of the second claim in its entirety, finding that the incentive pay was not paid pursuant to a policy that met FEMA's requirements. Exhibits 5 at 3, 6 at 3.

Documents Supporting Claim

Inspira had two collective bargaining agreements (CBAs) that covered the nursing personnel at its facilities. Exhibit 14. The CBAs were effective at the time of the disaster declaration and expired on May 31, 2022. *Id.* at 1 and 85.<sup>2</sup> The CBAs defined the nursing personnel as employees of Inspira. *Id.* at 6, 90.

Article 25 of both CBAs required Inspira to maintain adequate staffing levels and permitted Inspira to use incentives, including premium pay, to obtain these levels. Exhibit 14 at 19-20, 106. This clause also acknowledged that Inspira could deviate from its staffing

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<sup>1</sup> All exhibits to which we cite in this decision accompanied Inspira's RFA.

<sup>2</sup> Because both CBAs were provided in a single exhibit, the page references refer to the pages of the exhibit's .pdf.

guidelines in “unforeseen emergent circumstances.” *Id.* The CBAs described how shifts and time-off would be scheduled. *Id.* at 39-41, 126-28 (article 42). The CBA also dictated employee base wages, *id.* at 48-54, 135-41 (article 53), and defined premium compensation as “1.5 times the employee’s regular compensation rate.” *Id.* at 48, 135. The CBA identified rates for overtime and how Inspira would obtain volunteers for overtime shifts, *id.* at 43, 129-30 (article 46), the rates for employees who were reassigned to a different clinical unit or different campus (so-called “floaters”), *id.* at 21-23, 108-110 (article 27), and rates for employees on stand-by. *Id.* at 75, 163 (article 71).

Pursuant to the contract, Inspira negotiated during the pandemic two memoranda of understanding (MOU) with the union that provided adjustments to the requirements for staffing to address the effects of the pandemic. Exhibits 7, 8. The first MOU reiterated the amounts to be paid to nurses who were reassigned and provided that any employee working an extra shift would receive an additional \$20 per extra shift hour worked. Exhibit 7 at 3. The second MOU increased this amount to \$24 per hour. Exhibit 8 at 2.

According to the RFA, Inspira seeks reimbursement of approximately \$16 million for three types of costs: (1) extra shift COVID pay of \$5-24 per hour; (2) special incentive program pay of \$50 per hour on weekdays and \$55 per hour on weekends; and, (3) temporary bonuses for registered nurses of \$1250 for additional shifts during a two-week period or \$2800 for additional shifts during a four-week period. RFA at 22-26.<sup>3</sup> These premium pay rates are set forth in documents included in the record. Exhibits 9, 11-13. Although these documents are undated, these documents were issued in 2021 according to the exhibit list attached to the RFA. RFA at 29.

Inspira’s Associate General Counsel declared that Inspira was required by the CBAs to “bargain over and utilize COVID-specific premium pay programs for covered employees.” Exhibit 18 at 1. Inspira did not have “discretion to decline, delay, or omit the premium pay programs.” *Id.* at 2. Instead, they were negotiated once the conditions triggered the CBA requirement to negotiate. *Id.* at 3.<sup>4</sup>

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<sup>3</sup> According to the RFA, Inspira has removed from its request approximately \$5 million in costs that are not covered by the union contract. RFA at 14. Inspira does not identify the nature of these costs.

<sup>4</sup> FEMA filed a motion for leave to file a sur-reply, arguing that two new exhibits that Inspira attached to its reply brief merited a response from FEMA. One exhibit was the declaration of the Associate General Counsel, and the other was the decision from the United States Court of Appeals for the Third Circuit discussed below. Because FEMA discussed neither of these documents in its sur-reply brief and simply reiterated its earlier arguments,

### Discussion

#### FEMA Properly Analyzed Inspira’s Request for Public Assistance Pursuant to Its Force Account Labor Policy

Inspira challenges FEMA’s determination to analyze its claim pursuant to the force account labor policy, rather than viewing its costs claimed as costs incurred pursuant to its labor contracts, the CBAs. Inspira cites to several passages of the PAPPG which state that FEMA will pay costs incurred pursuant to the contract. *See, e.g.*, Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 25.

FEMA properly analyzed the claim under its force account labor policy. Accepting Inspira’s argument that these costs were incurred pursuant to the CBAs, the CBAs, by their terms, define the nurses covered by the CBA as employees of Inspira. Pursuant to FEMA policy, costs for employee time are considered force account labor. PAPPG at 23.

#### The CBA Does Not Mandate the Payment of the Premium Pay Claimed

To qualify for reimbursement of its premium pay costs, Inspira must show that the costs were incurred to perform eligible work and were paid pursuant to policies that meet FEMA’s policy requirements for such pay. FEMA policy requires that, to be eligible for reimbursement, “overtime, premium pay, and compensatory time costs [be] based on the Applicant’s pre-disaster written labor policy.” PAPPG at 23. The pre-disaster written labor policy must, among other criteria, “set non-discretionary criteria for when the Applicant activates the various pay types.” *Id.*<sup>5</sup>

Inspira argues that the CBAs, which were in effect prior to the disaster, mandated the payment of the premium pay. Specifically, Inspira cites article 25, which required Inspira to maintain adequate staffing levels, even in “unforeseen emergent circumstances,” and stated that premium incentive pay was a tool to use to meet this requirement. Inspira asserts that the MOUs and the other documents identifying the pay rates simply “memorialized the rate structures and eligibility mechanics” for the premium pay “contemplated by the CBA.” Inspira’s Reply to FEMA’s Response at 9.

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its motion is denied. The panel has also not considered the reply to FEMA’s sur-reply filed by Inspira.

<sup>5</sup> Because Inspira’s policy does not meet the force account labor policy requirements, we do not reach the parties’ arguments regarding whether the employees who received the premium pay were performing eligible work.

The problem with Inspira's argument is that the CBAs do not provide specific detail regarding the amounts to be paid and to whom they would be paid. While the CBAs stated the requirement to maintain adequate staffing, they did not state exactly what employees are to be paid to fulfill this obligation. The CBAs defined premium pay as 1.5 times an employee's base salary, but this does not appear to be how the premium pay was calculated. The required level of detail that ties to the costs that Inspira seeks is only found in the documents issued in 2021. Based upon these documents, FEMA properly found that Inspira did not have a pre-existing policy for premium pay as required by the PAPPG. *New York-Presbyterian Hospital*, CBCA 7412-FEMA, 22-1 BCA ¶ 38,207, at 185,553.

Inspira argues that FEMA's granting of the additional \$3500 for floater pay based upon the CBAs is inconsistent. We disagree. The rates of pay for nurses who are reassigned to different clinics and campuses are specifically spelled out in the CBAs. FEMA properly found that Inspira's claim for these amounts was supported by the CBAs, which existed prior to the pandemic. In contrast, the other rates of premium pay are not set forth in the CBAs. FEMA properly determined that these rates were unsupported by the CBAs.

Finally, Inspira argues that the CBAs mandated the payment of these costs, once the predicate for the institution of these costs was met. Inspira relies upon the decision in *Alaris Health at Boulevard East v. National Labor Relations Board*, 123 F.4th 107 (3d Cir. 2024), as support for the premise that it had no choice but to negotiate with the union and pay these costs. In *Alaris*, the court deemed bonuses paid to hospital personnel during the COVID pandemic to be hazard pay and subject to mandatory bargaining under the National Labor Relations Act, 29 U.S.C. §§ 151-169 (2018). However, the requirement to bargain with the union for these bonuses does not satisfy FEMA's requirement that Inspira pay the bonuses pursuant to a pre-existing policy that provides the non-discretionary criteria for awarding such bonuses. Since this criteria was created after negotiation with the union following the disaster declaration, Inspira cannot recover its premium pay costs.

### Decision

The request for public assistance is denied.

Marian E. Sullivan  
MARIAN E. SULLIVAN  
Board Judge

*Beverly M. Russell*

BEVERLY M. RUSSELL  
Board Judge

*Patricia J. Sheridan*

PATRICIA J. SHERIDAN  
Board Judge