

## BARGAINING DURING THE TERM OF THE AGREEMENT

**SECTION 1. INTRODUCTION:** In the administration of this Agreement, the Parties shall be governed by all statutes and existing government-wide rules and regulations, as defined in 5 USC Chapter 71, and by subsequently prescribed government-wide rules and regulations implementing 5 USC 2302 (the prohibited personnel practices).

**SECTION 2. PURPOSE:** The purpose of this Article is to prescribe the criteria and procedures by which the Parties shall engage in negotiations during the term of the Agreement. Matters appropriate for mid-term bargaining shall include those issues within the scope of bargaining, as proposed by either Party which are either newly formulated, or changes to established personnel policies and practices during the term of this agreement, which affect the working conditions of unit employees.

**SECTION 3. MID-TERM REOPENER:** By mutual consent of the Parties, the express terms of the Agreement may be amended at any time. In addition, each Party may reopen not more than three existing articles and propose one new article by serving written notice and/or proposals on the other during the eighteenth month of this Agreement. Negotiations shall be accordance with the provisions of this Article.

**SECTION 4. AGENCY NOTICE OF PROPOSED CHANGE:** At any time, either Party may propose changes in conditions of employment not already covered by this Agreement.

**A. Agency Initiated Request:** For Agency initiated changes, the Union will be provided with reasonable advance written notice, not less than fifteen (15) days prior to the proposed implementation date, of any change affecting conditions of employment. The initial notice will, at a minimum, contain the following information:

1. A statement of the existing written policy, schedule, process, structure or organizational chart;
2. A statement and description as to the nature and scope of the proposed change;
3. An explanation of why the proposed change is necessary;
4. If the proposed change is directed by an outside authority, the documentation from that authority, except to the extent such disclosure is prohibited by applicable law;
5. The number and location of employees the Agency anticipates will be affected;
6. The proposed implementation date; and

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7. The name and title of the Agency official to whom the Union should respond.

**B. Union Response to Agency Notice:** If in response to an Agency Notice, the Union desires to bargain, receive a briefing or waive, it must submit a response to the Agency within fifteen (15) days of receipt of the notice. Failure to submit a timely response shall constitute a waiver on the part of the Union. Upon request the Agency will provide information such as:

1. An explanation of the Union's plans for implementing this change;
2. How the Union expects these employees will be affected.

**SECTION 5. UNION NOTICE OF PROPOSED CHANGE:**

**A. Notice of Union Initiated Request:** If proposed by the Union, the initial notice will, at a minimum, contain the following information:

1. A statement and description as to the nature and scope of the proposed change;
2. An explanation of the expected benefit of the proposed change;
3. To the extent known by the Union, the location of employees affected.

**B. Agency Response to Union Request:** Upon a Union initiated request to bargain in connection with a matter for which a duty to bargain exists, the Parties shall schedule bargaining to begin no later than fifteen (15) days from the time of receipt by Management of the Union's request.

**SECTION 6. BARGAINING STRATEGY:** The Parties will mutually agree on the style of bargaining (e.g. Traditional Bargaining with written proposals, Interest-Based Bargaining with identified interests or Hybrid. Traditional Bargaining shall be the default if the Parties fail to agree on the bargaining strategy. The Parties retain the right to modify, withdraw, or add to any interests, concerns, or proposals they may have discussed or exchanged earlier.

**SECTION 7. GROUND RULES FOR MID-TERM BARGAINING:** The following ground rules apply to all mid-term bargaining entered into as a result of changes initiated by either Party and any corresponding obligation to bargain over such changes under 5 USC Chapter 71. These ground rules are intended to supplement the procedure set forth in this Agreement, and may only be changed by mutual consent.

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**A. Briefings:** Either Party may request a briefing session to explore or explain the change and its impact on unit employees. This session may be scheduled in advance of the start of actual negotiations, or as a part of the time allotted for bargaining.

**B. Bargaining Teams:**

1. Management will determine the number of members on its bargaining team and the union shall be entitled to have an equal number on official time.
2. The Union will be authorized at least three representatives with the number participating on official time being limited to the number of members of the management's bargaining team. Any union negotiators above and beyond the number of management negotiators will participate in an annual leave, LWOP, or non-duty status.
3. By mutual agreement, the number of union negotiators may be increased beyond three based upon the complexity and or numbers of issues to be negotiated, at the beginning of or during negotiations with the understanding that the number of such negotiators who are on official time is limited to the number of management negotiators.
4. The designated Union negotiators who are on official time will be entitled to official time for all time spent during the actual negotiations, including attendance at impasse proceedings, and for other related duties during negotiations, such as preparation time and time spent developing and drafting proposals provided the employee does so during the time that corresponds to their actual (or adjusted) scheduled hours of work and provided that this will not result in the payment of overtime, compensatory time, or other premium pay to the employee.

**C. Adjustment of Work Schedules:** Absent mutual agreement, the alternate work schedules and flexi place schedules of the Parties will be converted to regular tours of duty (i.e., Monday through Friday) and work hours adjusted according to the agreed-upon hours of negotiations.

**D. Alternates and Observers:** Designated alternate(s) may substitute for committee members. Such designated alternates will be entrusted, by the chief negotiator, with the right to speak for and to bind the members for whom they substitute. Observers shall be permitted in negotiating sessions only by the mutual consent of the Parties.

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**E. Negotiation Sessions:** The starting date and the daily schedule for negotiations will be established by the Chief Negotiators, taking into consideration the nature and proposed implementation date of the change. The Agency shall provide a negotiating room, and convenient confidential access to a telephone, unless the Union requests another site for negotiations, or the Parties mutually agree otherwise. Bargaining sessions normally conducted Tuesday through Thursday unless the Parties agree otherwise.

**F. Facility Arrangements:** Negotiations will be held in a suitable meeting room provided by the Agency at a mutually agreed upon site. The Agency will provide the Union negotiating team with customary and routine office equipment, supplies, and services, including but not limited to computer(s) with Internet access, telephone(s), desks and/or tables and chairs, and access to at least one printer/copier. The Agency will furnish the Union negotiating team with a caucus room, such as a conference room or other private meeting space which is in close proximity to the negotiation room.

**G. Caucuses:** It is agreed that either team may request a caucus, and may leave the negotiation room to caucus at a suitable site provided by the Agency. There is no limit on the number of caucuses which may be held, but each Party will make every effort to restrict the number and length of caucuses.

**H. Reaching Agreement:** Each Party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator or Chief Spokesperson who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign off on agreements for their respective Party. During negotiations, the Chief Negotiator (or an alternate) must be present and have the authority to bargain and reach agreement on behalf of the Party. The Chief Negotiator for each Party will signify agreement on each section by initialing the agreed-upon section. The Chief Negotiator for each Party will retain his/her copies and initial the other Party's copy. This will not preclude the Parties from reconsidering or revising any agreed-upon section by mutual consent.

**I. Effective Date:** The Agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. All agreements will set forth an "effective date" and a "termination date". The effective date will be no sooner than thirty-one (31) calendar days from execution, or upon agency head approval, and the termination date will be no later than the termination date of this agreement. Agreements negotiated pursuant to this article will be subject to Union ratification (prior to official signature) and may be subject to Agency head approval pursuant to 5 USC § 7114(c).

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**J. Note Taking:** No official transcript or electronic recordings will be made during the negotiations; however, each Party may designate a note taker to keep notes and records during the sessions. The Union note taker may be in addition to the bargaining team and will be on official time.

**K. Time Frames:** Any time frames specified in this Article may be waived or extended by mutual agreement of the Parties.

## **SECTION 8. NEGOTIATBILTY DISPUTES:**

**A. Resolution of Disputes:** If, after a good faith effort, the Parties are unable to reach an agreement, the matter may be referred to the Federal Services Impasses Panel (FSIP) for resolution. If the Agency declares a proposal to be non-negotiable, the Parties agree to utilize the FLRA's ADR procedure for resolution and guidance. Management shall not implement the proposed change(s) prior to completion of full and proper negotiations, including impasse proceedings. Union participants in these negotiations shall be on official time for any third Party proceeding, including but not limited to, preparation and investigations. Nothing in this Article precludes the Parties from invoking the services of the Federal Mediation and Conciliation Service (FMCS) at any point in negotiations.

**B. Resuming Negotiations:** If any proposal is determined to be negotiable or the allegation of non-negotiability is withdrawn, a request to resume negotiations must be made within thirty (30) calendar days from when the proposal is declared to be negotiable, or after the claim that the proposal is nonnegotiable is withdrawn. The parties will resume negotiations within a reasonable time after the request is made. Nothing in this section will preclude the right of judicial appeal.

**C. Scope of Bargaining:** Any provisions disapproved during Agency-head review may be referred to the FLRA by the Union. Any provision found by the FLRA to be within the scope of bargaining will be incorporated into the final Agreement. If the FLRA sustains the Agency's determination that the proposal is outside the duty to bargain the Parties will return to the bargaining table within a reasonable period of time to resume negotiations over the subject matter of the proposal.

**D. Revisions:** Nothing in this Section precludes the Parties from revising any proposals to overcome questions of scope of bargaining or duty to bargain during the period of negotiations, or mutually agreeing an extension of time limits in this Article.

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**SECTION 9. IMPASSE:** Impasses in negotiations shall be resolved by recourse to the provisions of Section 7119 of the Federal Service Labor-Management Relations Statute. The Parties shall be deemed to be at impasse at the conclusion of thirty (30) calendar days, unless the Parties mutually agree otherwise. However, either Party or both Parties jointly may declare an impasse prior to the completion of thirty (30) days. Either Party may request the FMCS to provide mediation services within ten (10) days after the impasse. The mediator shall be the sole judge of the procedures to be followed in attempting to resolve impasses.

**A. Submission to the Panel:** Any impasse not resolved through the FMCS may be submitted within ten calendar days by either Party to the FSIP to consider the matter under its regulations.

**B. Postponement of Implementation:** Other than an emergency, implementation shall be postponed to allow for the completion of bargaining, including impasse proceedings, except as required by law.

**SECTION 10. WAIVERS:** Nothing in this Agreement shall be deemed to waive either Party's statutory rights unless such waiver is clear and unmistakable (except as in Section 5A).

**SECTION 11. DATABASE OF MEMORANDUMS OF AGREEMENT:** An electronic data base for existing and future memorandums of understanding will be established and maintained by the Agency. This data may be facility based and will be made accessible to Union officials.

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