

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

NATIONAL LABOR RELATIONS  
BOARD

And

NATIONAL LABOR RELATIONS  
BOARD UNION

Case No. 17 FSIP 047

DECISION AND ORDER<sup>1</sup>

The National Labor Relations Board Union (NLRBU or Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the National Labor Relations Board (Agency, Management, or NLRB).

Following an investigation of the Union's request for assistance, which involves the implementation of Phased Retirement program, the Panel concluded that this impasse should be resolved through a Written Submissions procedure with the opportunity for rebuttal statements. The parties were informed that, after considering the entire record, the Panel would take whatever action it deemed appropriate to resolve the dispute, which could include the issuance of a binding decision. The Panel has now considered the entire record, including the parties' final offers, written submissions, and the parties' rebuttal statements.

BACKGROUND

The Agency's mission is to safeguard employees' rights to organize and to determine whether to have unions as their bargaining representative. The Agency also acts to prevent and

<sup>1</sup> Chairman Mark A. Carter did not participate in any portion of these proceedings.

remedy unfair labor practices committed by private sector employers and unions. There are two bargaining units involved in this dispute (the Agency agreed to negotiate with both of them simultaneously). The first represents all professional employees of the Agency's Office of General Counsel at Headquarters in Washington, D.C. and throughout the country. This unit consists mostly of GS-12 to GS-14 attorneys. The second unit has approximately 30 administrative GS-8 to GS-11 employees at Headquarters. All total, approximately 900 bargaining unit employees are a part of this dispute. The units are covered by a collective bargaining agreement (CBA) that expired in December 2016, but continues to roll over on an annual basis.

The parties had 13 bilateral negotiation sessions between April and December, 2016. They then had 6 mediation sessions with the assistance of the Federal Mediation and Conciliation Services (FMCS). The parties agreed on several proposals during negotiations and mediation but they could not fully resolve the dispute. Accordingly, FMCS formally referred the parties to the Panel on March 28, 2017. On September 6, 2017, the Panel asserted jurisdiction over this dispute.

#### ISSUES

This matter arises out of the parties' attempt to negotiate over the establishment of a Phased Retirement program within the Agency. In 2014, the Office of Personnel Management (OPM) promulgated regulations and guidance that authorized agencies to establish such programs but also clarified that establishment is subject to negotiations.<sup>2</sup> Phased Retirement is a "knowledge-transfer tool" used for succession planning purposes wherein a retirement eligible employee may, with the Agency's approval, become a part-time employee. While in this employment status, however, the employee would have to devote at least 20% of his or her duty time (or 8 hours per pay period) to mentoring Agency employees.

The parties are in disagreement over primarily five topics concerning Phased Retirement and most of these topics include several sub-issues. The remaining topics are: (1) participation eligibility; (2) termination of participation; (3) work schedules; (4) duration of the program; and (5) definitions.

<sup>2</sup> See 5 U.S.C. § 8412a; 5 C.F.R. § 581 *et seq.*

## POSITIONS OF THE PARTIES

### A. Participation Eligibility

#### 1. Union Position

The Union believes eligibility for Phased Retirement participation should be based on largely objective criteria and, as such, it offers several proposals in support of this philosophy. Under this topic, the primary point of contention is the application process itself. Interested retirement-eligible employees would be required only to certify their willingness to perform mentor-related activities.<sup>3</sup> They would not be required to draft a mentorship plan explaining how they would approach their mentor role (although they could draft one if they chose to do so). As a concession to Management, applicants would have to have a last rating of record of at least "fully successful." However, employees with a lower rating could still apply and only be denied if denial would assist with improving that employee's performance. Also of note, adverse actions could not be used to deny an applicant unless such actions were within 6 months of the employee's application and related to an employee's ability to mentor.

The Union's proposal also offers a list of several criteria the Agency should consider in the application process.<sup>4</sup> For example, although managers could consider budget and staffing concerns, it would have to consider the "benefit" of retaining employees in a part-time role. Employees on a performance improvement plan could be considered for the program unless denying entry would be "warranted to improve" that employee's performance. The Union also has a tie-breaker system wherein Management would use employee entrance dates if too many applicants apply at one time.

The Union is leery of any approach that gives Management broad and arbitrary discretion to deny applicants. It is for this reason that the Union's proposal focuses on self-certification and rejects Management's call to create a written mentorship plan. In the Union's mind, if an applicant has a performance rating of "fully successful" it should be assumed that they will be equally successful as a Phased Retirement

<sup>3</sup> See Union Proposal, Sec. VIII, p.5; see also Sec. IX, p.7.

<sup>4</sup> See Union Proposal at Sec. IX, p. 7.

participant. In this regard, many employees currently informally mentor other employees. Indeed, the Agency has promulgated guidance to its employees encouraging mentorship. The Union's approach encourages Management to take a broader view of employee qualifications.

## 2. Agency Position

The Agency disagrees with the Union's approach. Under its proposal, applicants would have to draft a mentorship plan to demonstrate to Management how they would accomplish their mentoring duties.<sup>5</sup> Like the Union's proposal, the Agency suggests examining certain criteria to determine an employee's eligibility.<sup>6</sup> However, the Agency limits its criteria to eight. At a minimum, an employee would have to have an overall annual rating of "fully successful." But the Agency would also look at, among other things, the need to transfer the applicant's skills, whether the applicant has the skills and knowledge to participate, and the impact of participation on the applicant's work unit. Additionally, the Agency would look at all conduct or performance-based actions within the past 2 years.

The Agency must be able to gauge an employee's potential as an effective mentor. Employees would be able to receive assistance from the Agency's Employee Development Group when preparing a mentor plan and would work with their supervisors to jointly develop the plan. It is not the Agency's intention to trap employees. But at the same time, the Agency cannot agree to a process that deprives Management of significant discretion in the selection process or otherwise requires it to overlook or minimize performance based deficiencies.

## CONCLUSION

The parties agree that evaluating an employee's potential to provide quality mentorship should be a staple of any Phased Retirement program. The main point of contention, however, is how that evaluation should be conducted. We believe the Agency has the better argument.

<sup>5</sup> See Agency Proposal No. 6. The Agency's proposals are attached in Appendix I to this decision.

<sup>6</sup> See Agency Proposal No. 7.

The Agency's proposed method would require the applicant to craft a mentorship plan explaining how he or she would perform their mentorship duties. Employees would receive training on how to draft the plan and would work jointly with a supervisor to do so. The foregoing method provides employees with sufficient Management guidance in the preparation of a plan that will hopefully withstand scrutiny in the eyes of those managers. But it also provides Management with an invaluable tool to evaluate an employee's potential to provide meaningful quality mentorship.

By contrast, the Union's method of self-assessment deprives the Agency of virtually all discretion to evaluate an employee's mentorship capabilities. Instead, the Agency would be required to accept virtually every employee so long as they have an overall performance rating of "fully successful." The Union claims this framework is sufficient because it should be assumed that any employee with such a rating can successfully mentor an employee. As the Union concedes, however, employees do not currently have a performance element that addresses mentoring. So it cannot be said that the Union's approach provides a true qualitative method of evaluating an employee's potential to succeed as a mentor. The Union's other chief concern as it relates to evaluating mentorship potential is that the Agency will use the application process to arbitrarily deny applications. But as explained above, applicants and supervisors would work closely to develop a mentorship plan. As such, employees should be able to gain an understanding of the type of information Management is seeking.

On balance, the Agency's proposal for mentorship evaluation is the better option. The goals of Phased Retirement cannot be satisfied if the Agency is forced to contend with ineffective mentors.

In addition to the mentorship plan issue, we adopt the Agency's language about the criteria Management will use to evaluate an applicant. The Union's proposed language requires, among other things, that the Agency: overlook certain adverse actions; accept employees who are on performance improvement plans unless certain conditions are met; and approve employee participation where an employee has a less than "fully-successful" rating unless Management can establish that denial is warranted in order to improve that employee's performance. In short, the Union's criteria essentially ask Management to turn a blind eye to several potential performance deficiencies. It is unclear how allowing potentially underperforming employees

into the program furthers the goal of successful knowledge transfer. Moreover, as program participants would have to devote 80% of their duty time to non-mentor duties, the presence of underperforming employees could hamper the Agency's overall mission is well.

## B. Termination of Participation

### 1. Union's Position

The Union offers several proposals concerning termination of Phased Retirement participation.<sup>7</sup> Although they discuss topics like voluntary retirement, many of them touch upon preventing removal from the program. For example, performance-based "involuntary termination," i.e., removal from Phased Retirement would only be permissible if an employee's "mentorship" critical element became deficient. And unlike the Agency's proposed language on this topic, the loss of professional credential, e.g., a law license, would not be a basis for removing an employee because it would not impact a participant's ability to perform his or her mentorship duties. The Union also proposes prohibiting Management from conditioning entry into the program on acceptance of an end date for Phased Retirement participation.<sup>8</sup>

The biggest point of contention concerns circumstances under which an employee could return to full-time employment. In this regard, the Union proposes a three-tier approach.<sup>9</sup> In the first 60 days of Phased Retirement, an employee may return to regular employment at any time. The Agency agrees with this proposal. Under proposal two, after 60 days, but before the expiration of a Phased Retirement period, an employee could return to full employment unless the Agency could demonstrate "just cause" otherwise. The Union's final proposal on this topic is that, upon expiration of a Phased Retirement term (which could be as long as 2.5 years), the employee would have the automatic option of returning to regular employment. If positions are not available, the employee would be placed on a waiting list but remain in Phased Retirement status. The Agency disagrees with the last two proposals.

<sup>7</sup> See Union Proposal at Sec. V, p. 3-4.

<sup>8</sup> See Union Proposal at Sec. III.

<sup>9</sup> See Union Proposal at Sec. V.1 and 2, p. 3-4.

While the Union's termination proposals cover several different scenarios, they are largely motivated by the same concern. Specifically, the Union worries that employees could elect to participate in Phased Retirement only to have their financial situation change during the course of participation. Thus, the Union wishes to preserve an employee's ability to return to full-time employment. Barring that, the Union seeks to ensure that an employee may remain in the Phased Retirement program.

## 2. Agency's Position

The Agency's approach to the termination of participation is more straightforward. Phased Retirees have the option of returning to employment within the first 60 days of Phased Retirement participation. After 60 days, employees could return upon "mutual agreement" between Management and the employee, if conditions such as budgeting and staffing needs would permit it.<sup>10</sup> This approach is consistent with Article 22 of the CBA and other Agency procedures governing when other types of part-time employees may return to full-time employment.<sup>11</sup> Additionally, under the Agency's proposals, employees could be released from the program if their overall performance rating becomes less than "fully successful" or they lose a professional license.

The Union's proposals create too much uncertainty for Management. It needs to be able to account for its staffing and budgetary concerns when deciding whether to accept an employee returning from Phased Retirement. The Union's approach creates an open-ended expectation for regular employment that could burden the Agency's resources. Additionally, Management feels that the Union's proposals undercut the purpose of Phased Retirement as a knowledge transfer tool. There is no need for such a tool if a Phased Retiree will simply return to their prior position.

## CONCLUSION

<sup>10</sup> See Agency Proposal Nos. 2, 3, and 5.

<sup>11</sup> Although the Agency is arguing that its position is consistent with the CBA it is not alleging that the Union's proposals on this topic are covered by the CBA.

We shall impose the Agency's final offer to resolve this issue. In promulgating guidance to support Phased Retirement programs, OPM noted that "the main purpose" of Phased Retirement is to "enhance the mentoring and training of the employees who will be filling the positions or taking on the duties of more experienced retiring employees."<sup>12</sup> And in issuing accompanying regulations, OPM commented that Phased Retirement is a "workplace planning tool" and "not an employee entitlement."<sup>13</sup> Thus, the expectation of Phased Retirement is that, although it provides a vehicle for retirement-eligible employees to continue working, its primary focus is to ensure a successful workplace transition once an employee leaves Federal service. It is not to serve primarily as a windfall or safety net for participating employees. The Agency's proposals more closely align with these goals.

The Agency's proposals recognize that some employees may experience changed circumstances after commencing Phased Retirement and, as such, gives them a 60-day window to withdraw from participation. But its proposals also recognize that the Agency must balance its staffing needs and budgetary goals. Thus, the window assists employees but also provides assurance to the Agency that it need not devote resources to ensuring potential future full-time employment for every Phased Retirement participant. Additionally, by requiring all participants to maintain an overall "fully successful" annual rating and professional credentials, the Agency is promoting the goal of Phased Retirement as a knowledge transfer tool. In this regard, these requirements help the Agency ensure that employees who mentor other employees have the knowledge and skills necessary to pass on information and to competently perform their own duties as well.

The Union's proposals are both cumbersome and arguably do not mesh with OPM's stated goals for Phased Retirement and, as such, should be rejected. The three-tier system it proposes to establish what circumstances an employee may return to full-time

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<sup>12</sup> "O.P.M. Benefits Administration Letter, No. 14-108, Subject: Phased Retirement Employee Frequently Asked Questions" at 1 (Aug. 8, 2014) (available at <https://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2014/14-108.pdf>).

<sup>13</sup> "Phased Retirement," 79 Fed. Reg. 46,608 at 46,613 (Aug. 8, 2014).



employment is one wrought with potential confusion and litigation. In this regard, the parties could become bogged down in whether or not it is appropriate to allow employees to return to employment and, in doing so, lose sight of the goal of knowledge transfer. Moreover, the Union's proposed third tier simply allows an employee to return to employment upon the completion of their term with little to no exception. Knowledge transfer becomes superfluous if the transferring employee can simply return to their employment after completing a Phased Retirement stint. Based on the foregoing rationale, we also reject the Union's proposal that forbids the Agency from requiring employees to agree to a Phased Retirement end date as part of the application process.

We also reject the Union's other proposed limitations on program termination. The Union's proposal limits performance-based "involuntary termination" to poor performance in a mentorship critical element. The Union is potentially creating a scenario in which a Phased Retiree could remain in the program while maintaining numerous performance deficiencies in some or all of his or her remaining performance areas (which certainly raises questions about the effectiveness of one's mentorship). Similarly, the Union's insistence that an employee should remain in the program if they lose their professional credentials is not grounded in reality. Losing such credentials likely limits an employee's ability to perform certain duties, e.g., perform the practice of law, so it is not clear why the Union believes business should continue as normal. In short, these proposals aim to create an "entitlement" to Phased Retirement that is at odds with OPM's guidance and should be rejected.

### C. Work Schedules

#### 1. Union's Position

The Union proposes expanding flexible work bands for employees on flexible work schedules, creating new tours of duties, and granting employees more time to use accrued credit hours.<sup>14</sup> At various offices throughout the country, flexible work bands for Phased Retirement employees would be extended by 4 to 8 hours. Additionally, the Agency would be required to offer a Saturday tour of duty. Finally, Phased Retirement employees would have 2 pay periods to use accrued credit hours. The current Agency practice is to allow all employees to retain

<sup>14</sup> See Union Proposal at Sec. II, p. 1-2.

credit hours for 1 pay period only. The Union claims its proposals are necessary to ensure that Phased Retirement employees can meet their deadlines and also serve as an effective mentor. Additionally, some of their work will be trial-related, so Phased Retirees need flexibility to work beyond "normal" hours. The Union also offers proposals on travel time, compensatory time, and religious observation time. These proposals reference various sections of Article 21 of the CBA and OPM regulations that discuss duty hours for phased retirees.<sup>15</sup>

The Union rejects the Agency's claim that Article 21 or Article 22 of the existing CBA addresses its work hour proposals. When these articles were negotiated, Phased Retirement had not even been enacted. Consequently, nothing in these articles addresses Phased Retirement or Phased Retirement employees. Thus, it is simply incorrect to say that Phased Retirement is either explicitly addressed or somehow bound up in the language of the contract.

## 2. Agency's Position

The Agency believes the Union's proposals are covered by the parties' CBA and are, therefore, outside its duty to bargain. Thus, it has no counter proposals. Specifically, it maintains that the proposals are covered by Article 21, "Hours of Work" and Article 22, "Guidelines for Part-Time Employment." The Union's desire to increase work bands and establish new flexible work bands on the weekend touches upon matters that are already explicitly addressed in Article 21 (albeit not for Phased Retirees). Additionally, the Union's request to extend the preservation of credit hours is a matter discussed in Article 22 for other types of part-time employees.

On the merits, the Agency does not believe an actual need exists for the Union's proposals. Due to their part-time status, employees in the program would not have the same type of work load demands that regular employees face.

<sup>15</sup> See *id.* (citing 5 C.F.R. §§ 831.1715(h) and 848.204; CBA, Art. 21, §§ 1(e)(4) and 1(k)).

## CONCLUSION

We will decline jurisdiction over the Union's proposals. These proposals touch upon work schedules for part-time employees in specific and work schedules in general. Both of these topics are discussed in depth in the attached CBA articles. In other words, they are plausibly covered by the parties' CBA and, therefore, not subject to further bargaining. The Union's argument that the CBA does not address Phased Retirement ignores that it discusses the general subject of these proposals, i.e., work schedules and part-time employment.

The Union's proposals also reference compensatory time, travel time, and religious compensation time and ties them to relatively new Federal regulations that govern these categories of duty time for Phased Retirees. However, the proposals also cross-reference Article 21, effectively tying the regulations to the CBA. Because of this interconnectivity, the Panel will decline jurisdiction over the Union's proposals discussing these regulations as well.

### D. Duration of Program

#### 1. Union's Position

The Union proposes including a reopener provision that would allow either side to re-open the parties' MOU 30 days prior to the 1-year anniversary of the MOU's execution. The Union is not willing to include any language allowing a termination after 1 year, nor is it willing to permit the Agency to introduce a proposal during proposed reopener negotiations calling for its termination. Any reopener negotiations would be subject to the Union's related proposed ground rules which address, among other things, official time, information requests, and FSIP assistance. The Union also proposes implementing the MOU quickly. The parties agreed to four "windows" of Phased Retirement application; the Union thinks that perhaps there could be a "one time" window following agreement to allow for the quickest implementation.

#### 2. Agency's Position

The Agency proposes a 1-year pilot period for Phased Retirement.<sup>16</sup> If problems persist that the parties cannot resolve then the Agency wishes to retain the ability to

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<sup>16</sup> See Agency Proposal No. 9.

terminate the program. Should the program end, however, the Agency is willing to review the "effectiveness" of the pilot program. The Agency does not wish to become entrenched in another set of lengthy negotiations concerning Phased Retirement.

### CONCLUSIONS

We will order the adoption of the Agency's proposal. The parties have already devoted considerable time and resources to bargaining this matter. Adopting the Union's proposal would create an open-ended invitation to additional prolonged bargaining. Moreover, if the program creates problems for the Agency's resources or mission, the Union's proposal prohibits Management from timely and efficiently addressing them at the conclusion of the pilot period. But the Agency's proposal does address the Union's concerns by inviting a review of the effectiveness of the program following any potential conclusion. Thus, on balance, Management's proposal is the better fit.

#### E. Definitions

##### 1. Union's Position

The Union requests adoption of its proposal because it contends the Union's definitions are easier to understand and are not "filled with legalese."<sup>17</sup>

##### 2. Agency's Position

The Agency prefers its version because it was crafted by the Agency's technical advisor and is also consistent with OPM's regulations and definitions used by other agencies with Phased Retirement programs.<sup>18</sup>

### CONCLUSIONS

The Agency patterns its definitions after OPM's Phased Retirement definitions<sup>19</sup> and definitions used by other Federal

<sup>17</sup> See Union Proposal at Sec. IX, p. 8-9.

<sup>18</sup> See Agency Proposal No. 8. The Agency also claims one of the issues in dispute concerns the title of the parties' Phased Retirement MOU. See Agency Proposal No. 1.

<sup>19</sup> See 5 C.F.R. § 848.102.



agencies that have established Phased Retirement programs.<sup>20</sup> The Union crafted its own definitions in the hopes of avoiding "legalese" issues. However, given that the Union's proposals have no comparator, it is difficult to gauge whether they will actually accomplish the Union's stated goal. By contrast, the Agency's definitions are based upon relatively commonly accepted proposals adopted throughout the Federal government. Accordingly, we adopt the Agency's proposed definitions.

We note also that the Agency claims the parties are in disagreement over the title for their Phased Retirement MOU. The Union does not dispute this assertion, nor does it contest the Agency's proposed title. Accordingly, we adopt it.

#### 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 Agency's final offer attached in Appendix I.

By direction of the Panel.

  
 Jonathan Riches  
FSIP Member

December 15, 2017  
Washington, D.C.

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<sup>20</sup> Specifically, the Agency examined programs at NASA, HUD, EPA, and the Department of Treasury.

Appendix I - Agency Proposal

**Proposal No. 1: Title of MOU**

Agreement Between The National Labor Relations Board, the  
General Counsel of the NLRB and the National Labor Relations  
Board Union

Phased Retirement Pilot Program

**Proposal No. 2: Termination of Phased Retirement**

Phased retirement may be terminated early for one of the following reasons:

- a. The phased retiree elects to return to full-time employment in the current position within 60 calendar days of entering the program;
- b. By mutual agreement between the phased retiree and supervisor for the phased retiree to return to full-time employment in the current position after 60 calendar days in the program;
- c. The phased retiree accepts another position in the agency;
- d. The phased retiree transfers to another Federal agency;
- e. The phased retiree elects to be fully retired;
- f. The phased retiree's performance rating is less than fully successful;
- g. The phased retiree fails to maintain a required condition of employment, such as maintaining an applicable professional credential to perform the work;
- h. The phased retiree is removed from Federal service; and
- i. Death of the phased retiree.

**Proposal No. 3: Return to Regular employment Status**

A phased retiree may elect to return to full-time employment in their current position within 60 calendar days of entering the program.

After 60 calendar days in the Phased Retirement Program, a phased retiree may also return to regular employment status by mutual agreement between the employee and management.

**Proposal No. 4: Entering full time retirement status**

A phased retiree may terminate participation in the program at any time by electing to be fully retired.

**Proposal No. 5: Request to Return to Regular Employment**

After 60 calendar days in the Phased Retirement Program, a phased retiree may also return to regular employment status by mutual agreement between the employee and management.

**Proposal No. 6: Application Process**

1. Applications for the phased retirement program must include a proposed mentor plan that will be submitted by the applicant. In the proposed mentor plan, the applicant will describe their proposed mentoring activities and describe their relevant qualifications and experience to provide the mentoring proposed in their plan. The Agency has also drafted a proposed mentor plan mock up.
2. Proposed Mentor Plan
  - i. The Agency will provide initial training on mentoring and the development of a Proposed Mentor Plan to employees interested in applying for phased retirement.
  - ii. The Agency will provide a Mentor Plan Template and instructions to employees interested in applying for phased retirement.
  - iii. The phased retirement applicant, in collaboration with a supervisor, will jointly prepare a Proposed Mentor Plan that identifies specific mentoring activities to

transfer knowledge and skills to other employees and demonstrate how the mentoring activities will benefit the Agency.

- iv. Mentoring activities may include, but are not limited to: direct mentoring of less experienced staff, developing/conducting training, developing standard operating procedures (SOPs), and shadowing.

#### **Additional Proposal Language on Mentoring Requirement**

##### **Mentoring Requirement**

- a. Upon entering the program, each phased retiree will receive in-depth training on mentoring for the phased retirement program.
- b. The supervisor will work with the phased retiree to finalize the Mentor Plan.
- c. To the greatest extent possible, mentoring activities will occur in the immediate office of the phased retiree. However, mentoring activities across offices will be considered where appropriate.
- d. If circumstances prevent the phased retiree from completing the mentoring requirement (i.e., a mentee leaves the organization, it will be the responsibility of the supervisor to work with the phased retiree to update the Mentor Plan as appropriate.
- e. Mentor Time Recording
  - i. Phased retirees agree to spend at least 20 percent of each pay period (8 hours or more per pay period) on mentoring activities.
  - ii. Work time devoted to mentoring activities will be recorded each pay period in the time and attendance system utilized by the phased retiree's office.

#### **Proposal No. 7: Approval Process**

- 2. Applications will be considered on a case-by-case basis under criteria that includes, but are not limited to, the following:
  - a. Whether the Agency has a need to capture the applicant's skills or knowledge for current or



- future employees. The full performance level can be taken into account in evaluating an applicant's skills and knowledge.
- b. Whether a 40-hour per pay period work schedule is appropriate for the applicant's position.
  - c. Whether operational needs may consistently require the applicant to work in excess of a 40-hour per pay period work schedule.
  - d. Whether the applicant's change to a 40-hour per pay period work schedule will have an adverse effect on the work unit's ability to meet goals and objectives.
  - e. Whether the applicant has been subject to any conduct or performance-based action within the past 2 years from the date of application; however, conduct or performance-based action may be waived as a factor based on the severity and specific circumstances underlying the infraction.
  - f. Whether the applicant's most recent performance rating is at least "Fully Successful" or equivalent at the time of application.
  - g. Whether the applicant has the knowledge, skills and abilities to fulfill the mentoring requirements outlined in the Proposed Mentor Plan referenced in this Agreement.
  - h. Any personal consideration(s) the applicant believes is relevant to rendering a decision on their phased retirement program participation.

#### **Proposal No. 8: Definitions**

**The Agreement**—The current collective bargaining agreement between the Agency and the NLRBU, and any extensions.

**Civil Service Retirement System (CSRS)** - Established in Subchapter III of Chapter 83 of Title 5, U.S. Code, CSRS is the federal retirement plan applicable to federal employees who attained five (5) years of creditable CSRS service prior to January 1, 1987 and who did not elect to convert to the Federal Employees Retirement System (FERS).

**Federal Employees Retirement System (FERS)** - Established by Public Law 99-335 in Chapter 84 of Title 5, U.S. Code with an effective date of January 1, 1987, FERS is the federal retirement plan applicable to federal employees first hired after December 31, 1983, for those employees previously covered under CSRS who elected to transfer to FERS, and for those employees previously covered under CSRS who did not attain five (5) years of creditable CSRS service prior to January 1, 1987.

**Full Retirement Status** - Under a Phased Retirement Program, a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity, as provided under subpart Q of 5 CFR 831 or 5 CFR 848.

**Basic Work Requirement** - The number of hours, excluding overtime hours, an employee is required to work or to account for by charging leave, credit hours, excused absence, holiday hours, compensatory time off, or time off as an award.

**Biweekly Pay Period** - The 2-week period for which an employee is scheduled to perform work.

**Composite Retirement Annuity** - The annuity computed when a phased retiree attains full retirement status.

**Employee** - The meaning given that term in 5 U.S.C. 2105.

**Employee Annuity** - The recurring payments under CSRS or FERS made to a retiree, the recurring phased retirement annuity payments under CSRS or FERS made to a phased retiree in phased retirement status, and recurring composite retirement annuity payments under CSRS or FERS made to a phased retiree when he or she attains full retirement status. Employee annuity does not include payments of accrued and unpaid annuity after the death of a retiree or phased retiree under 5 U.S.C. 8342(g) or 8424(h).

**Full Time:** An officially established recurring basic workweek consisting of 40 hours within an employee's administrative workweek (as established under 5 CFR §610.111) or 80 hours per biweekly pay period for employees

with a flexible or compressed work schedule (as established under 5 CFR §§ 831.1702 and 848.102).

**Mentee** - For the purposes of a Phased Retirement Program, an Agency employee or group of employees who receive mentoring from a phased retiree.

**Mentoring:** A process that focuses specifically on providing guidance, direction, and career advice, which includes a wide range of activities that allow for the transfer of knowledge and skills from one employee to others.

**Phased Retiree:** A retirement-eligible CSRS or FERS employee who, with approval from an authorized agency official, (1) has entered phased retirement status; and (2) has not entered full retirement as defined in 5 CFR § 848.

**Phased Retirement Period:** The period beginning on the date on which an employee becomes entitled to receive a phased retirement annuity and ending on the date on which the employee separates from phased retirement.

**Phased Retirement Program** - Established Agency guidelines and procedures in accordance with 5 U.S.C. 8336a, 5 U.S.C. 8412a, 5 CFR Part 831, Subpart Q and 5 CFR Part 848 for retirement eligible employees to apply, receive approval, and enter phased retirement.

**Phased Retirement Status:** An employee concurrently employed in phased employment and eligible to receive a phased retirement annuity.

**Retirement Annuity** - The recurring monthly payments to a former employee who has retired.

**Phased Retirement Annuity:** The annuity payable under 5 U.S.C. 8336a before full retirement.

**Retiree:** A former employee, including a phased retiree who has entered full retirement status.

**Retirement-Eligible Employee:** As described in 5 CFR §§ 831.1711(b) and 848.201(b), for the purposes of phased

retirement only, a retirement-eligible employee as an employee, who if separated from service, would meet the requirements under 5 U.S.C. 8336(a) and (b) for CSRS and 5 U.S.C. 8412(a) and (b) for FERS.

**Supervisor of Record:** The supervisor of the phased retiree during the period which they serve in a phased retirement status.

**Time Limit:** The length of time an employee may participate in phased retirement.

**Time Limit Agreement:** A written condition of approval whereby the agency and the employee mutually agree on a specified time limit the employee may work as a phased retiree.

**Working Percentage:** The percentage of full-time equivalent (FTE) employment an employee may work as a phased retiree as described in 5 CFR §§ 831.1712(a) and 848.202(a).

**Proposal No. 9: Scope of Program**

1. The phased retirement pilot program will commence on February 1 of the calendar year following execution of this Agreement.
2. The duration of the phased retirement pilot program is one-year.
3. In the event the Agency ends the phased retirement program at the conclusion of the one year pilot, the Agency will honor an employee's phased retirement agreement if the agreement extends beyond the expiration of the pilot.
4. Upon expiration of the pilot, the parties will review the effectiveness of the phased retirement pilot program.