

**70 FLRA No. 87**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 1502  
(Union)

and

UNITED STATES  
DEPARTMENT OF THE ARMY  
MADIGAN ARMY MEDICAL CENTER  
TACOMA, WASHINGTON  
(Agency)

0-NG-3382

DECISION AND ORDER  
ON NEGOTIABILITY ISSUES

March 8, 2018

Before the Authority: Colleen Duffy Kiko, Chairman,  
and Ernest DuBester and James T. Abbott, Members

**I. Statement of the Case**

The Union filed a petition for review of negotiability issues under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (Statute).<sup>1</sup> This petition concerns thirty-three proposals by the Union in response to the Agency stating that it was implementing 10 U.S.C. § 1599e concerning probationary periods. In addition to this negotiability appeal, the Union has a pending unfair labor practice (ULP) charge against the Agency. Because that ULP charge concerns issues directly related to this petition, we dismiss the petition without prejudice.

**II. Background**

On October 7, 2016, the Agency notified the Union that it was implementing a two-year probationary period for certain employees pursuant to 10 U.S.C. § 1599e. The Union invoked bargaining but, after several attempts to schedule a time for impact and implementation bargaining, filed a ULP charge in Case No. SF-CA-17-0187 (first ULP charge) against the Agency. The Union

withdrew the first ULP charge after the parties reached a settlement agreement. Under this agreement, the Agency agreed to bargain to the extent required by the Statute over the Union's proposals.

After the parties entered into the settlement agreement, the Union resubmitted its proposals to the Agency. In response, the Agency informed the Union that the Agency was not required to negotiate over the Union's proposals because they were either outside the scope of the proposed change or not related to conditions of employment.

In response, the Union filed another ULP charge in Case No. SF-CA-17-0444 (second ULP charge) on June 27, 2017, alleging that the Agency repudiated the settlement agreement pertaining to impact and implementation bargaining.

After filing the second ULP charge, the Union filed this petition with the Authority on August 14, 2017.

**III. Analysis and Conclusion**

In its petition, the Union stated that the second ULP charge was related to the current petition and was ongoing. As relevant here, the Authority's Office of Case Intake and Publication issued an order to show cause on September 27, 2017, directing the Union to demonstrate why the petition should not be dismissed under § 2424.30(a) of the Authority's Regulations<sup>2</sup> because it may be directly related to the pending ULP. In its response to the order, the Union did not deny that the pending ULP related to the current petition, but argued that "[t]he Union does not have faith the matter can be resolved with the pending ULP charge."<sup>3</sup>

Section 2424.30(a) provides, in relevant part, that where a union files a ULP charge and the charge concerns issues "directly related" to a petition for review in a negotiability case, the Authority will dismiss the petition for review, without prejudice to the union's right to refile the petition after the resolution of the ULP charge.<sup>4</sup>

<sup>2</sup> 5 C.F.R. § 2424.30(a).

<sup>3</sup> Union's October 11, 2017 Resp. to Order to Show Cause at 1.

<sup>4</sup> 5 C.F.R. § 2424.30(a); *see also* *NTEU*, 69 FLRA 355, 355-56 (2016) (*NTEU I*); *NTEU*, 62 FLRA 267, 268 (2007) (stating that § 2424.30 "was adopted in 1999 as part of a 'unified process' for negotiability petitions that raised both negotiability and bargaining obligation disputes"); *NAGE, Local R5-168*, 56 FLRA 796, 797 (2000).

<sup>1</sup> 5 U.S.C. § 7105(a)(2)(E).

Here, the pending ULP charge alleges that the Agency “repudiat[ed] . . . an established private settlement agreement pertaining to” impact and implementation bargaining and references the first ULP charge.<sup>5</sup> In turn, that settlement agreement from the first ULP charge states that “the Union will submit proposals concerning the impact and implementation of the Agency’s decision to change the probationary period for newly-hired bargaining[-]unit employees to two years. . . . The Agency shall then bargain to the extent required by the Statute.”<sup>6</sup>

The Union’s negotiability appeal concerns thirty-three proposals. According to the Union, these proposals, “in whole or in part . . . affect working conditions for probationary employees.”<sup>7</sup> The Union also notes that it is “not attempting to bargain over the change in [10 U.S.C. § 1599e] itself, but the effect of the change on probationary employees.”<sup>8</sup>

As such, the pending ULP proceedings could resolve whether the Agency has an obligation to bargain over proposals related to that implementation of 10 U.S.C. § 1599e and the proposals presented in this petition; and, therefore, the pending ULP proceedings could render the issues raised in the Union’s negotiability appeal moot.<sup>9</sup>

Consequently, this petition and the second ULP charge involve the same proposals and the same issues regarding the Agency’s duty to bargain, and are thus directly related.<sup>10</sup> Therefore, we dismiss the Union’s petition without prejudice to the Union’s right to refile the petition at a later time if it is able to meet the conditions governing the Authority’s review of negotiability issues.<sup>11</sup>

#### **IV. Order**

We dismiss the petition without prejudice.

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<sup>5</sup> Pet., Attach. 7 at 4.

<sup>6</sup> Pet., Attach. 5 at 2.

<sup>7</sup> Union’s September 6, 2017 Resp. to Order to Show Cause at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *NTEU I*, 69 FLRA at 355-56.

<sup>10</sup> *Id.* (finding ULP charges directly related to proposal where the ULP proceeding could render the issue moot).

<sup>11</sup> 5 C.F.R. § 2424.30(a).