

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. 20 FSIP 081

DECISION AND ORDER¹

This case, filed by the National Labor Relations Board (Agency, Management, or NLRB) on September 3, 2020, concerns ground rules for the reopener of the parties' successor collective bargaining agreements (CBAs) and arises pursuant to Section 7119 of the Federal Service Labor Management Relations Statute (the Statute). It is the Agency's second filing on this dispute because the Panel dismissed its previous filing in 20 FSIP 014 due to a number of jurisdictional issues.

The Agency is an independent Federal agency that was created in 1935 to administer and enforce the National Labor Relations Act. The NLRB has two principal functions: (1) to determine, through secret-ballot elections, whether employees wish to be represented by a union; and (2) to prevent and remedy unfair labor practices. These functions are discharged by two components of the Agency: (1) the General Counsel (GC); and (2) the Board, made up of the Chairman and four additional Members of the Board. The General Counsel investigates and prosecutes unfair labor practice (ULP) cases and processes representation petitions. The Board is a quasi-judicial body that decides appeals from decisions of administrative law judges in ULP cases and from decisions of Regional Directors in representation cases.

The National Labor Relations Board Union (NLRBU or Union) represents Agency employees in two separate bargaining units covered by 2 separate CBAs. One unit includes GC-side Headquarters non-professionals and Field professionals and non-professionals; and a second unit includes Board-side Headquarters non-professionals. The BU represents approximately 644 employees on the GC-side, and 20 employees on the Board-side. This dispute involves ground rules bargaining over the successor CBAs

¹ Chairman Carter and Member Vernuccio did not participate in this matter.

for the GC-side and Board-side units. The Agency terminated the agreements in October 2019 and this dispute involves negotiations over ground rules that will be used to negotiate successor agreements.

BARGAINING HISTORY

The parties had about 20 hours of negotiations over 6 sessions between February 2020 and June 2020. They had 4 sessions of FMCS-assisted mediation: 2 in the fall of 2019 and 2 in the summer of 2020. The last mediation session was on August 14, 2020, for under 7 hours. Because the parties could not reach agreement, the Mediator released the parties on August 18th in Case No. 201910430006. The Agency filed this request for assistance on September 3, 2020, and on November 10th, the Panel voted to assert jurisdiction over all issues in dispute and to resolve them through a Written Submissions process with an opportunity for rebuttal statements. The parties timely provided submissions and rebuttals.

ISSUES

The parties have been unable to reach agreement on around 15 proposals that cover a variety of topics. Rather than negotiate this agreement in articles, the parties bargained it paragraph-by-paragraph. Thus, an article-by-article analysis is not possible.

Prior to turning to discussing the parties' proposals, the Panel notes that in its initial written submission the Union claims that the parties reached agreement on Agency Paragraph 5/Union Paragraph 7 (which concerns the use of Skype for negotiations).² Thus, the Union claims that the Panel no longer has jurisdiction over this issue. The Agency's initial submission, by contrast, lists this issue as remaining in dispute.³ In their respective rebuttals, the Union doubles down on its claim and the Agency does not even address it. The only evidence the Union provided in support of an alleged agreement was an email the Union's representative sent to the Agency's representative stating the Union consented to the Agency's language; however, the Union did not provide any evidence demonstrating that the Agency responded to that email. Thus, there is no evidence of a tentative agreement. **However, as it appears there is no remaining dispute on language between the parties, the Panel will impose Management's proposal for Agency Paragraph 5.**

Paragraph 2, Number of Bargaining Team Members

Relevant Agency Language	Relevant Union Language
Each party's bargaining team will have up to 7 members; a party may choose to	Each party's bargaining team will have up to 7 members per bargaining session; a

² See Union Initial Argument at 2.

³ See Agency Initial Argument at 5.

have fewer than 7 members, but a decision by one party to have fewer than 7 members will not diminish the number of members that the other party is entitled to.	party may choose to have fewer than 7 members, but a decision by one party to have fewer than 7 members will not diminish the number of members that the other party is entitled to.
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I. Agency Position

The Agency proposes that each bargaining team have “up to” 7 bargaining members present at each bargaining session. The Agency believes this language will ensure adequate representation during negotiations. Management contends that the Union’s language, which adds an additional qualifier, is unnecessary.

II. Union Position

The Union agrees to the “up to” language but would also add a qualifier that this figure applies “per bargaining session.” The Union maintains this qualifier is necessary to ensure that the Agency will not attempt to unilaterally lower the number of bargaining team members who may participate in a bargaining session.

III. Conclusion

The Panel imposes Management’s proposal. The Union maintains its language is necessary because Management could attempt to unilaterally diminish the number of bargaining team members present at a bargaining session. The Union, however, offered little explanation for how Management could accomplish such a feat with its language. The Union’s language, then, only creates a potential for confusion and will be rejected.

Paragraph 3, Exchange of Proposals

Relevant Agency Language	Relevant Union Language
The parties will exchange written proposals in electronic form no later than the 30th calendar day (or the next business day if the 30th day is a non-work day) after the last execution date affixed to this agreement or date of decision issued by the Federal Service Impasses Panel (FSIP) over the parties’ ground rules. Proposals and counter proposals will be provided in electronic form and by hard copy, if necessary, to facilitate efficient bargaining sessions.	The Agency will provide its initial written proposal to the Union in electronic form no later than the 30th calendar day (or the next business day if the 30th day is a non-workday) after the effective date of this agreement. The Union will provide its initial written proposal to the Agency in electronic form no later than the 30th calendar day (or the next business day if the 30th day is a non-workday) after receiving the Agency’s initial written proposal. Thereafter, proposals and

	counter proposals will be provided in electronic form and by hard copy, if necessary, to facilitate efficient bargaining sessions.
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I. Agency Position

The Agency proposes that the parties exchange proposals within 30 calendar days of the execution of the ground rules or the issuance date of any Panel decision. The Agency argues that such a window is consistent with other decisions issued by this Panel and with the suggested timeframes for bargaining promulgated by Executive Order 13,836, "Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining" (May 25, 2018).⁴ This limited window will allow the parties to facilitate a more efficient and quicker resolution. By contrast, the Agency argues, the Union's proposed window will only lengthen the time necessary to bring negotiations to a conclusion. The Agency contends that the Union has been on notice for some time that the agreements would be re-negotiated: there is no need for an extended timeframe for negotiations.

II. Union Position

The Union proposes that, in addition to Management's proposed window, the Union will receive 30 days to provide counter proposals *after* it receives the Agency's language. This is because the Agency has moved to reopen the agreements: as such, the Union will not know what the Agency is seeking to change until it receives the Agency's initial proposals. The Union also proposes that the timeframe for exchanging proposals will not begin until "the effective date" of the ground rules agreement rather than the "execution date" as Management proposes. The Union contends this distinction is necessary because any ground rules agreement would have to go through the 30-day process for Agency head review under 5 U.S.C. §7114(c). So, according to the Union, the agreement cannot even go into effect until the foregoing process is complete.

III. Conclusion

The Panel imposes the following modified version of the Agency's proposal (new language in bold):

The parties will exchange written proposals in electronic form no later than the 30th calendar day (or the next business day if the 30th day is a non-work day) after **the effective date of this agreement.**

⁴ See Agency Initial Position at 4-5 (citations omitted).

The Union's concern about the need to see the Agency's proposals is addressed by the fact that counter proposals are permitted after the exchange of initial proposals. Moreover, the Union's concern ignores that the Union may also offer new initial proposals of its own. The Agency's language concerning timing places the parties on equal footing.

However, the Union has raised a valid concern regarding agency head review. All agreements must go through this process regardless of whether the parties agree to language or whether the Panel imposes language. Management's language seemingly does not acknowledge this process: it will be modified to account for it.

Union Paragraph 4, Permissive Matters

Union Proposal	Agency Proposal
The Agency agrees that it will bargain in good faith over proposals that constitute permissive subjects of negotiation under 5 U.S.C. section 7106(b)(1). The Agency agrees that it will not object to the FSIP's subsequent exercise of jurisdiction over such proposals should a bargaining impasse be invoked.	[The Agency has no counter proposal]

I. Union Position

The Union requests that the Panel impose this language because the forthcoming administration has announced that it will direct agencies to engage in negotiations over permissive topics of bargaining.⁵ The Union claims that the Agency has not declared this proposal outside the duty to bargain, so the Panel has authority to impose it upon Management.

II. Agency Position

The Agency opposes this language and has no counter proposal. It has repeatedly informed the Union that, pursuant to the plain language of the Statute, Management has elected not to bargain over permissive topics of bargaining.

III. Conclusion

The Panel orders the Union to withdraw its proposal. Under 5 U.S.C. §7106(b)(1), an agency may bargain over certain permissive topics of bargaining "at the election of the agency." That is, a Federal agency may choose to bargain over the

⁵ See Union Initial Argument at 3-4 (citation omitted).

substance of these topics but is not required to do so. The Agency has stated that it does not desire to engage in the foregoing negotiations, and the Panel has no authority to impose anything different upon them even if the Agency previously declined to raise negotiability issues. It would, therefore, be inappropriate to impose the Union's requested language.

Union Paragraph 6, Information Requests

Union Proposal	Agency Proposal
<p>The bargaining schedule outlined above will not be activated if the union files information requests related to the agency's initial proposals within 10 days of receiving those proposals. If the union makes these requests in a timely manner, then the bargaining schedule will not begin until either the requested data is provided, or any dispute, e.g., grievance, or FLRA charge, is resolved (up to and including FLRA resolution) unless there is mutual agreement at the time of the denial to do otherwise.</p>	<p>[No proposal]</p>

I. Union Position

The Union argues that it has statutory right to information under 5 U.S.C. §7114. The Union contends that asking it to proceed with negotiations without necessary information would be inconsistent with that right. As such, the Union requests that its language be adopted.

II. Agency Position

The Agency maintains that the Union's language should be rejected. The Agency contends that the Union is attempting to "weaponize" information requests because the Union's proposal would delay bargaining over any information requests or third-party actions arising therefrom. There is ample authority that addresses what agencies must do when confronted with an information request. The Union's language, then, is unnecessary.

III. Conclusion

The Panel orders the Union to withdraw its proposal. Under 5 U.S.C. §7114(b)(4), and as part of its statutory duty to bargain in good faith, an agency has a duty "to furnish" information to an exclusive representative during the bargaining

process if requested by the representative and certain criteria are satisfied.⁶ However, nothing in this language states that all bargaining must halt while such requests are pending. As the Agency adroitly notes, ample precedent governs information requests and their impact on negotiations. Thus, the Union's language is unnecessary.

Agency Paragraph 7/Union Paragraph 11, "Official Time"

Due to their length -- the Union's in particular -- the parties' proposals for this article are set forth in the attached Appendix.

I. Agency Position

The Agency offers a succinct proposal that it maintains is consistent with statutory grants of official time under 5 U.S.C. §7131. In particular, Management acknowledges that the Union has a statutory right to official time while in negotiations and during FSIP proceedings. But, the Agency also proposes that Union bargaining team members must request official time in advance and may not spend more than 25% of their annual duty time in negotiating the successor agreements. All of the foregoing, the Agency contends, is consistent with §7131 and Executive Order 13,837 "Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use" (Official Time Order). The Agency believes all of the foregoing is consistent with principles of effective and efficient government operations.

The Agency opposes the Union's language for a litany of reasons. To begin with, the Agency notes that the Union wishes to place several members on anywhere between 40%-75% official time with an additional 20-32 hours of official time *per week*.⁷ Management does not believe that the Union has demonstrated that these figures are reasonable, necessary, and in the public interest. The Agency contends these figures derive from prior contract language. But, as the Agency notes, the Official Time Order supersedes that. Additionally, the Agency accuses the Union of expanding the meaning of negotiations under 5 U.S.C. §7131(a) so as to make non-bargaining tasks such as caucuses eligible for mandatory grants of official time. Relatedly, the Agency is against Union language that would grant the Union official time for preparation and pursuing actions related to term negotiations: the Agency contends that the Union never demonstrated a need or entitlement to such time. Finally, the Agency opposes Union language concerning mandatory meetings in the Agency's facilities because of the ongoing Covid-19 pandemic.

II. Union Position

⁶ See 5 U.S.C. §7114(b)(4).

⁷ See Agency Initial Position at 7.

The Union's language establishes a proposed cacophony of official-time entitlement spread across several paragraphs, eight subsections, and two footnotes. In its arguments to the Panel, the Union largely breaks down its arguments by sections.

- Union Introductory Paragraph: The Union argues that it has an entitlement to official time for a wide variety of matters related to collective bargaining, including travel time.⁸ And, it notes the Panel has authorized official time for caucuses in other matters. The Union also claims that Management's language would impermissibly limit Union team members to official time under §7131(d) when they are in duty status only; but, the Union argues that they have a right to such time when they are in non-duty status as well.
- Union Subsection (a):⁹ This language prohibits any official time under the ground rules from being considered as part of any cap under the Official Time Order. The Union notes that the incoming administration intends to remove official time caps.
- Union Subsections (b) and (c):¹⁰ The Union proposes that it is entitled to official time for FMCS and FSIP proceedings, including post-FSIP time to finalize agreements. The Union believes it is entitled to such time.
- Union Subsection (d):¹¹ The Union requests official time for the processing of any FLRA negotiability appeal and that any such time would not count against any overall cap of official time. Again, the Union believes it is entitled to this time.
- Union Subsection (e):¹² Under this proposal, Management would grant the Union meeting space if requested. But, Management would only have to provide such space if it is available.
- Union Subsection (f):¹³ The Union proposes that it will inform supervisors of official time use, but it will not be required to get permission to use it because such an approach is arguably inconsistent with 5 U.S.C. §7131. The Union opposes Management's proposed 25% cap because the Official Time Order places no cap on time under §7131(a).

⁸ See Union Initial Argument at 6 (citing *Dep't of Defense Dependents Schools*, 14 FLRA 191 (1984))(DoDEA).

⁹ See Appendix at 1.

¹⁰ See *id.*

¹¹ See *id.* at 1-2.

¹² See *id.* at 2.

¹³ See *id.*

- Union Subsection (g):¹⁴ The Union proposes a schedule of official time per week for various activities and numerous members of the Union’s bargaining team, including officers and non-officers.¹⁵ The Union argues this approach is consistent with 5 U.S.C. §7131(a) and the expiring agreements.
- Union Subsection (h):¹⁶ Finally, the Union requests official time for any grievances/arbitration that would arise from successor negotiations. Although the Union concedes that official time for such activities is barred by the Official Time Order, the Union notes that the incoming administration tends to end this bar.¹⁷

III. Conclusion

The Panel imposes a modified version of Management’s proposal. The crux of the parties’ dispute over official time turns on the applicability of the Official Time Order and its various limitations contained therein.

With respect to official time, the Union is statutorily entitled to some degree of official time under 5 U.S.C. §7131(a) and (c).¹⁸ The crux of this dispute turns on official time that is permitted under §7131(d) of the Statute. In *Social Security Administration and AFGE*, 19 FSIP 019 (May 2019) (*SSA*), the Panel acknowledged that 5 U.S.C. §7131(d) provides for official time in any amount parties agree to be “reasonable, necessary, and in the public interest.” However, the Panel also noted that it has authority to impose amounts when the parties cannot reach agreement. When imposing such decisions, the Panel clarified that it expects all parties to justify their proposed language on official time as “reasonable, necessary, and in the public interest.” In the absence of such justification, the Panel has authority to impose a different amount.

Since the issuance of *SSA*, President Trump’s May 25, 2018, Executive Orders that concern, among other topics, Federal-sector collective bargaining have gone into effect. These Orders provide an important source of public policy that the Panel may implement. Notably, Section 3(a) of the Official Time Order states that official time granted under §7131(d) should not be considered reasonable, necessary, and in the public interest if it exceeds 1 hour per bargaining unit employee. This figure, however, must also account for the size of the bargaining unit and “the amount of [official] time anticipated to be granted under sections 7131(a) and 7131(c)” of the Statute.¹⁹ The

¹⁴ See *id.* at 2-3.

¹⁵ See Union Initial Argument at 9-10.

¹⁶ See Appendix at 3.

¹⁷ See Union Initial Argument at 10.

¹⁸ These sections of the Statute grant official time for collective bargaining and FLRA-related matters, respectively.

¹⁹ Executive Order 13,837, Sec. 3(a).

Panel has the authority to award an amount of time that differs from this Order. But, the party moving for such time has the burden described above to demonstrate that their requested time is reasonable, necessary, and in the public interest.

Finally, on December 23, 2020, the FLRA issued a negotiability appeal decision involving a ground rules dispute and two of the three Executive Orders. In *Patent Office Professional Association and U.S. Patent and Trademark Office, Alexandria, Va.*, 71 FLRA 1223 (2020)(*PTO*) the PTO alleged that 7 proposals were non-negotiable because they conflicted with parts of Executive Orders 13,836²⁰ and 13,837.²¹ The union – the Patent Office Professional Association (POPA) – disagreed. A majority of the FLRA held that President properly issued these Orders pursuant to his statutory authority to “regulate the Executive Branch.”²² Because the President acted under this cloak of authority, the FLRA concluded that the Executive Orders have the full force and effect of law.²³ Moreover, the FLRA rejected several POPA arguments that various parts of the aforementioned Orders conflicted with the plain language of the Statute. Based on the foregoing, the FLRA held that all of the Union proposals at issue in *PTO* were non-negotiable because they conflicted with portions of the relevant Orders.

In this dispute, the Agency has made no secret that its proposal is largely motivated by the policy interests behind the Official Time Order. The Union’s primary objection to those interests is that the incoming administration intends to eliminate this Order. Yet, the Panel cannot operate on future speculation, it must rely upon the factual present. As such, there is no basis for departing from the Order unless the Union has provided data to demonstrate that its language is otherwise reasonable, necessary, and in the public interest. The Union has not. It offers a multi-tiered schedule of official time for various Union officials that is largely dependent upon their Union position. But, the Union has not linked its specific proffered amounts to needs for those specific positions. The Union also claims a need for official time for a wide variety of activities, such as negotiability appeals and grievances that would be related to successor negotiations. Again, this is an item fueled by speculation and, therefore, inappropriate.

Moreover, the Agency proposes to cap official time usage and to prohibit official time use for grievances and arbitration. These are items that are directly lifted from the Official Time Order, and they were also proposals discussed in *PTO*. Specifically, in *PTO*, the FLRA concluded that Union proposals that conflicted with the foregoing sections of the Order were non-negotiable.²⁴ So, imposing this Agency language is appropriate under the FLRA’s decision in in *Commander, Carswell Air Force Base*, 31 FLRA 620

²⁰ “Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining.”

²¹ The Official Time Order.

²² *PTO*, 71 FLRA at 1224 (citation omitted).

²³ *See id.*, 71 FLRA at 1224-25.

²⁴ *See PTO*, 71 FLRA at 1228, 1230.

(1988)(*Carswell*). In *Carswell*, the FLRA held that the Panel may apply existing precedent to resolve negotiability issues if that precedent involves “substantively identical” proposals. Because *PTO* involves “substantively identical” proposals, the Panel may apply its relevant holdings as another basis for concluding that Management’s language should be adopted.

The remainder of the Agency’s language is appropriate for adoption. It establishes common-sense policies for the use and approval of official time that will allow the Agency to balance its workforce needs with the Union’s statutory right to engage in collective bargaining.

However, the Union contends that the existing CBA’s account for official time. The Union did not provide those agreements and they are not in the record. Nevertheless, in an excess of caution, the Panel believes it is appropriate to add some language that generally accounts for the existence of those agreements. Should the parties disagree over what the agreements require, they may pursue disagreements in the appropriate forum(s).

Based on all the foregoing, the Panel imposes Management’s language with the following modification. The first sentence of Management’s language will be altered as follows (new language in bold):

NLRBU bargaining team members will be entitled to official time in accordance with 5 U.S.C. 7131 **and applicable law** for time spent in the negotiation of the collective bargaining agreements, including attendance at impasse proceedings, during the time the bargaining team members otherwise would be in a duty status.

Union Paragraph 9/No Agency Proposal, “Facilities and Equipment”

Union Proposal	Agency Proposal
<p>If the Union travels to any bargaining session at the Agency’s Headquarters in Washington, D.C., it may submit a request for Facilities for use of a furnished conference room as a meeting and caucus space for the NLRBU’s bargaining team. The NLRBU’s bargaining team will have access to the room before and after office hours and on weekends. If requested, the Agency will provide the following for the NLRBU bargaining team’s use while bargaining at the Agency’s Headquarters: 2 laser printers,</p>	<p>[No Agency Proposal]</p>

a telephone equipped with voice mail and speakerphone capability, a flip chart and stand, and 2 locking file cabinets.	
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I. Union Position

The Union has agreed to accommodate the Agency by occasionally meeting in Washington, D.C. for negotiations even though the Union has several members of its bargaining team who are located in other states. As such, the Union believes it is only fair that the Agency provide some meeting space and equipment when the parties convene in Washington, D.C. The Union notes that past ground rules agreements between the parties have allowed for these enmities.²⁵

II. Agency Position

The Agency has no counter language. It claims that the Union’s language asks for “antiquated” pieces of equipment – such as “flip charts” – that does not account for newer technological advances and would require Management to purchase equipment for the Union. Management claims that office space and equipment should be utilized for Agency operations only, and that the Union’s requests are inconsistent with the Official Time Order. As to the latter issue, Section 4(iii) of the Order prohibits “free or discounted use of government property or any other agency resources” to exclusive representatives unless such use is granted to other non-government entities.²⁶

III. Conclusion

The Panel orders the Union to withdraw its proposal. The Agency argues that offering the Union its requested space/equipment could burden the Agency’s operations. The Agency offered little data to that effect, however. But, Management is in a better position to ascertain its operational needs and should be given deference on that fact.

Union Paragraph 10/No Agency Proposal, “Agency Equipment”

Union Proposal	Agency Proposal
Members of the NLRBU’s bargaining team may use the Agency’s space, network resources, their Agency-owned laptop computers and cell phones, desktop/laser printers and portable printers, without charge, during negotiations, and for	[No Agency counter proposal]

²⁵ See Union Initial Position at 5.

²⁶ See Executive Order 13,837, Sec. 4(iii).

<p>preparation for and follow through after negotiation sessions, including any subsequent FMCS and FSIP proceedings. In addition, if requested by the NLRBU, the Agency will endeavor to supply, consistent with operating needs and to the extent resources permit, two private offices with wireless network connections, printer access and a telephone for use by members of the NLRBU’s bargaining team.</p> <p><u>Footnotes:</u> 1)All times are local times in the host city for that meeting. 2)See, 2018 FSIP 036 (August 3, 2018) and 14 FLRA 191 (April 6, 1984).</p>	
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I. Union Position

The Union argues the above is appropriate for similar reasons as argued in the Union’s proposed Paragraph 9. The Union requests full imposition of its language.

II. Agency Position

The Agency opposes the Union’s language in full. Its arguments are those relied upon in its opposition to Union Paragraph 9.

III. Conclusion

The Panel orders the Union to withdraw its proposal. Again, this is an issue of deference to the Agency’s assessment regarding its equipment and facilities.

Agency Paragraph 8/Union Paragraph 12, “Travel Expenses”

Union Position	Agency Position
<p>The Agency will contribute a maximum of \$51,135 towards the transportation costs, lodging costs and per diem of the NLRBU’s bargaining team members who are located outside of the corporate city limits where bargaining</p>	<p>The parties will be responsible for the travel, lodging and attendant expenses of their respective bargaining team members in connection with negotiations, including mediation and impasse proceedings, if necessary, and any</p>

sessions occur, including mediation and impasse proceedings, if necessary, and any joint meetings that may be required to finalize contract language.	joint meetings that may be required to finalize contract language.
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I. Union Position

Citing again the fact that some members are not in Washington, D.C., the Union claims a need for travel expenses. Its figure of \$51,135 is the amount of travel expenses the Agency voluntarily granted the Union in 2011 (\$45,000) adjusted for inflation.²⁷ The Union also notes that the Panel has imposed travel expenses in the past upon the Agency as well.²⁸ Finally, the Union claims that the Agency offered no objection to the Union's request other than a "principle" that it would simply not fund travel.

II. Agency Position

The Agency argues that each party should be responsible for their own travel costs (if any) because each side has their own source of funds. The Agency also argues that the Union's language is inequitable because it places the burden of travel costs solely upon one party. Finally, the Agency notes that the parties have tentatively agreed to language elsewhere in their agreement that grants bargaining team members the option to participate in participations by video teleconference.

III. Conclusion

The Panel imposes the Agency's language. The Union claims it is appropriate to adopt its proposal because the parties have agreed to funding in the past and prior Panel decisions have imposed travel costs upon the Agency. However, this Panel has taken a clear stance that it believes parties are responsible for their own travel costs absent agreement. Moreover, as the Agency notes, the parties have agreed that Union representatives may participate in negotiations via video conferencing technology. As such, that approach could cut down on the need for travel costs. Accordingly, for all the foregoing reasons, the Agency's language is most appropriate.

²⁷ See Union Initial Position at 11.

²⁸ See *id.* (citations omitted).

Agency Paragraph 10/Union Paragraph 14, "Mediation Assistance"

Agency Position	Union Position
<p>If complete agreement is not reached after the conclusion of the final bargaining session (identified in paragraph 5), then the parties will jointly request that FMCS provide mediation assistance. The parties will request the FMCS to expeditiously schedule the mediation. Notwithstanding the agreement of the parties to jointly request FMCS assistance, if necessary, either party may unilaterally request FMCS assistance at any earlier time.</p>	<p>If complete agreement is not reached after the conclusion of the final bargaining session (identified in paragraph 5), then the parties will jointly request that FMCS provide mediation assistance. The parties will request the FMCS to expeditiously schedule the mediation. Notwithstanding the agreement of the parties to jointly request FMCS assistance, if necessary, either party may unilaterally request FMCS assistance, but not before the parties' conclusion of the fifth week of face-to-face bargaining.</p>

I. Agency Position

The Agency is in agreement that the parties will jointly seek FMCS assistance after the parties' agreed-upon 5-week bargaining schedule is complete. But, the Agency wants the freedom to seek such assistance at *any* time in order to avoid artificially prolonged negotiations. Additionally, the Agency believes that placing a requirement on how much mediation must occur prior to mediation could limit the Mediator's statutory authority to conduct mediation as they deem fit pursuant to 5 U.S.C. §7119(a). The Agency also objects to the Union's language that refers to "face-to-face bargaining" because the parties have already agreed to language permitting video negotiations.

II. Union Position

The Union opposes the Agency's language. It believes that the Union's language would allow for more fulsome negotiations and would respect FMCS's resources.

III. Conclusion

The Panel imposes modified version of the Union's proposal. The Agency is rightfully concerned about delayed negotiations. But, an equally weighty concern should be meaningful negotiations. The Agency requests the imposition of language that would permit either party to seek FMCS assistance at any point during the parties' agreed-upon 5-week negotiation schedule. So, conceivably, the Agency could seek FMCS assistance after 1 week of negotiations. However, it is unclear from the record how many articles will be opened during negotiations. If the parties intend to open a significant number of articles, an artificial "escape valve" could give one party the ability

to seek premature mediation, and ultimately, Panel assistance. The parties should be encouraged to take full advantage of the bargaining window that is available to them.

However, the “face-to-face” language in the Union’s last sentence will be stricken. As noted elsewhere in this decision, the parties have agreed to language concerning video conferencing bargaining due to the ongoing pandemic. Striking the foregoing language, then, allows for consistency.

Agency Paragraph 11/Union Paragraph 15, “Impasse Procedures”

Agency Proposal	Union Proposal
<p>If mediation assistance is requested, but no complete agreement is reached, then either party may thereafter request assistance from FSIP on any articles where agreement is not reached. If the parties participate in either in-person mediation or in-person impasse proceedings, and those meetings are conducted in Washington, D.C., then the Agency and Union will be responsible for their respective representatives’ travel, lodging, and attendant expenses.</p>	<p>If mediation assistance is requested and fully provided, as determined by the mediator, but no complete agreement is reached, then either party may thereafter request assistance from the Federal Service Impasses Panel on any articles where agreement is not reached. If the parties participate in either in-person mediation or in-person impasse proceedings, and those meetings are conducted in Washington, D.C., then the Agency and Union will be responsible for their respective representatives’ travel, lodging, and attendant expenses consistent with the allocation of expenses described in paragraph 12 above.</p>

I. Agency Position

The two issues in disagreement are whether: (1) the Mediator must first determine that mediation has been “fully provided” before either party may seek FSIP assistance; and (2) whether the Agency will pay for any FSIP-related travel costs. The Agency opposes both. As to the first issue, the Agency contends that the ability to assess whether the parties are at an impasse rests solely with the Panel and not the Mediator. Thus, according to the Agency, it would be inappropriate to place FMCS in a position to assess whether the parties have fully utilized mediation, i.e., are at an impasse. With respect to travel costs, the Agency relies upon the same arguments it presented for the other Union proposal concerning travel costs.

II. Union Position

The Union believes that it should be up to the Mediator to assess whether Panel assistance is premature. As to the costs issue, the Union again notes that it has received travel costs in the past.

III. Conclusion

The Panel imposes the Agency’s language. As correctly noted by the Agency, under 5 U.S.C. §7119(c), the Panel is the sole authority for assessing whether parties have reached an impasse. Although the Panel will consider the parties’ bargaining history before FMCS, that is but one of several factors that the *Panel* considers in its assessment of the existence of an impasse. Concerning costs, for reasons already stated elsewhere, it is appropriate to reject the Union’s language that addresses travel costs.

Agency Proposal 12/Union Proposal 16, “Completion of Agreement”

Agency Proposal	Union Proposal
<p>As tentative agreement is reached on individual articles, sections, or issues, a written document will be prepared, and the chief negotiator of each team will initial and date the document at the time the tentative agreement is reached. The absence of a party’s team member from bargaining at the time when tentative agreement has been reached on an article, section, or issue shall not be grounds for that party to reopen such matter. When each article, section, and issue has been initialed, complete tentative agreements will have been reached, and their texts, except for typographical or grammatical corrections, will not be subject to further modification absent mutual agreement.</p>	<p>There will be no complete agreement until there is agreement on all outstanding issues, including those that were the subject of a negotiability appeal. As tentative agreement is reached on individual articles, sections, or issues, a written document will be prepared, and the chief negotiator of each team will initial and date the document at the time the tentative agreement is reached. When each and every article, section, and issue has been initialed, complete tentative agreements will have been reached, and their texts, except for typographical or grammatical corrections, will not be subject to further modification absent mutual agreement.</p>

I. Union Position

The Union’s main position, as set forth in its first sentence, is that successor negotiations should not be considered complete until all potential FLRA negotiability appeals related to those negotiations are resolved. The Union believes that allowing a potential scenario in which there would be negotiations only over proposals involved a

negotiability appeal, instead of the entire agreements at once, would be a scenario that raises illegal “piecemeal negotiations.”²⁹ Indeed, the Union notes that, when this dispute was previously before the Panel in 20 FSIP 014, the Panel declined jurisdiction over an Agency proposal that required the parties to sever and bargain independently any proposals involved in negotiability appeals.³⁰ The Union believes a similar analysis should apply here to reject the Agency’s opposition to the Union’s first sentence because striking this sentence would create “de facto severance.”

II. Agency Position

The Agency opposes the Union’s first sentence because the Agency is striving for finality in the bargaining process. Management contends that allowing the agreement to remain open while the parties resolve other matters would not accomplish the foregoing. For related reasons, the Agency is opposed to Union language in the beginning second sentence that says “each and every” (Management’s language drops the word “every”). Again, Management believes such language would serve only to prolong negotiations. The Agency wants to ensure that the parties capture tentative agreements as appropriate during the course of negotiations.

III. Conclusion

The Panel imposes the Agency’s language. Turning first to the Union’s initial proposed sentence, the Union claims that the Panel rejecting this sentence would create a “de facto” severance scenario that the Panel has rejected in other situations. Yet, the Union has not demonstrated that the *only way* the Union may protect any of its perceived rights is through the adoption of its language. In *Nuclear Regulatory Commission and NTEU*, 20 FSIP 035 at 19-20 (2020)(*NRC*), the Panel faced a similar ground rules proposal. There, NTEU proposed that all third-party proceedings, including negotiability appeals, should be resolved before the disputed CBA could be considered completed. And, the NRC offered its own competing language. Rather than adopt NTEU’s language, the Panel simply ordered both parties to withdraw their respective proposals. The Panel concluded that the parties’ competing language attempted to define the scope of the parties’ rights, and that such attempts were more appropriate for resolution in other forums than the parties’ ground rules agreement.

The Panel believes the Panel’s conclusion in *NRC* is instructive to the dispute here. The first sentence of the Union’s proposal essentially calls for codification of what the Union believes its rights to be under the Statute. But, that language is unnecessary to accomplish that goal. Moreover, nothing in Management’s language appears to address any of the Union’s rights. Thus, even with rejecting the Union’s first sentence,

²⁹ See Union Initial Argument at 13 (citing *Dep’t. of the Treasury, Internal Revenue Service*, 64 FLRA 934, 938 (2010)).

³⁰ See 20 FSIP 014, Procedural Determination Letter at 3-4.

the Union is free to pursue whatever rights it believes it is entitled to do when the situation may arise.

Regarding the beginning of the Union’s second sentence, the Union offered little support to distinguish “each and every” from “each.” That is, the two competing sets of proposed language appear to be a distinction without a difference. Therefore, the Union’s language need not be adopted.

Based on all the foregoing, Management’s language will be imposed. It is unnecessary to order the parties to withdraw their full proposals – as the Panel did in *NRC* – because the parties are otherwise largely in agreement aside from the two instances discussed above.

Agency and Union Paragraphs 17, “Execution and Ratification”

Agency Proposal	Union Proposal
<p>The Agency will submit an electronic version of the agreement(s) to the NLRBU bargaining team within 30 calendar days following agency-head approval by the General Counsel and the Chairman. Thereafter, the NLRBU will advise the Agency of any typographical or grammatical corrections within 30 calendar days of receipt. The version reviewed and signed by the parties will be designated as the final electronic agreement. The Agency will upload edit-proof and searchable versions of the final electronic agreement(s) to the Agency’s SharePoint site.</p>	<p>The Agency will submit an electronic version of the agreement(s) to the NLRBU bargaining team within 15 days following tentative agreement on all issues (including those that were the subject of a negotiability appeal) and any FSIP decision. Thereafter, the NLRBU will advise the Agency of any typographical or grammatical corrections within 15 days of receipt. The Agency will upload edit-proof and searchable versions of the final electronic agreement(s) to the Agency’s SharePoint site.</p>

I. Union Proposal

The Union states the parties agree that the Agency will provide the Union with an electronic version of any agreement for review but notes a key difference between the parties’ proposals. This difference, according to the Union, is that the Union would require Management to provide the “tentative agreement” *after* the completion of any negotiability appeal and FSIP process. By contrast, the Agency’s language would not require it to provide the agreement until after the Agency-head review process, at which point the agreement would be considered “executed.”

According to the Union, the Agency’s proposed scheme is inconsistent with Section 7114(c)(2) of the Statute. This language states:

The head of the agency shall approve the agreement within 30 days *from the date the agreement is executed* if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation.³¹

According to the Union, this quoted language establishes that the “only. . . logical” process is that any tentative agreement must first go through review and ratification before it can be considered executed and ripe for the statutory agency-head review process. Any other scheme, the Union contends, is inappropriate. The Union also rejects any notion that its proposed timeframe for review – which utilizes 60 days versus the Agency’s 30 days – is intended to create any delay.

II. Agency Position

The Agency objects to the Union’s language because it would create too many delays. It also believes that the Union’s language would improperly allow for the ratification of Panel-imposed language.³²

III. Conclusion

The Panel imposes Management’s language. The Union makes much of the timing with respect to the “execution” of any agreement, insinuating that the Agency’s language could, among other things, interfere with the Union’s right to ratify the agreement. However, Management’s language speaks only to non-substantive steps (essentially “proof reading”) that would happen *after* the Agency-head review process has ended. Management’s language does not appear to address ratification or any steps prior to Agency-head review. Thus, Management’s language is appropriate to impose upon the parties.

Agency Paragraphs 13, 15, and 16/Union Paragraph 18, “Ratification

Agency Proposal	Union Proposal
<p>13. The tentative successor agreements are subject to ratification by the NLRBU’s membership. Within 3 business days following ratification, the parties will sign the agreements.</p>	<p>The complete tentative agreement for each unit will be subject to ratification by the NLRBU’s membership. Within 3 business days following ratification, the parties will sign each agreement. Within 3 business days following ratification, the parties will sign the agreements. Once</p>

³¹ See Union Initial Argument at 14 (citing 5 U.S.C. §7114(c)(2)(emphasis added)).

³² See Agency Rebuttal at 17.

<p>15. After execution, the parties agree that the executed term agreement may be referred to the NLRBU for ratification. If the NLRBU fails to ratify the term agreement in whole or part the parties may negotiate a resolution. If the parties cannot reach resolution, the agency shall seek assistance from the FSIP within seven (7) calendar days after the date the NLRBU fails to ratify the term agreement. The parties may present their respective arguments to FSIP.</p> <p>16. The date of the Agency's receipt of the Union notice of ratification will toll the thirty (30) calendar day period for agency head review pursuant to 5 U.S.C. §7114 (c)(1).</p>	<p>the agreements are executed, they will be reviewed by the Agency-Heads pursuant to 5 U.S.C. § 7114(c)(1).</p>
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I. Agency Position

In its proposed Paragraph 13, the Agency would permit ratification of tentative agreements and then would call quickly for signature following ratification. The Agency acknowledges that a union may make ratification a condition precedent to a final and binding agreement.³³ But, the Agency is opposed to any Union language that would permit a ratification vote of Panel imposed language, i.e., "complete tentative agreement."³⁴ The Agency argues that the FLRA has never recognized the existence of such a right and that allowing such a right would also be inconsistent with the Statute. Thus, Management asks for adoption of its language.

Regarding its proposed Paragraph 15, the Agency seeks a prompt resolution for negotiations following any failed ratification vote. In the Agency's view, by that point, the parties would have already spent a significant amount of time bargaining a

³³ See Agency Initial Argument at 13 (citation omitted).

³⁴ The Union's initial proposal language – which the Agency submitted as part of this request for assistance – explicitly stated that FSIP imposed language would be subject to ratification. The Union appears to have dropped this language as part of its Panel submissions in favor of the amorphous "complete tentative agreement" language that now appears in the Union's first sentence. Despite this alteration, the Union continues to offer arguments concerning the appropriateness of ratifying Panel-ordered language. The Union did not offer an explanation for this alteration.

successor agreement. Prolonged negotiations would not be beneficial. The Agency notes that the Panel has imposed similar language in other disputes.³⁵

Finally, in its Paragraph 16, the Agency claims that notice of ratification would “toll” the 30-day period for agency-head review set under 5 U.S.C. §7114(c)(2). Again, the Agency’s intent is to ensure that completion of the agreement occurs in a timely and effective manner. The Agency believes its proposal is consistent with the aforementioned statutory provision.

II. Union Position

Although the Union’s language is less than clear (in part because the Union altered its final proposal upon submission to the Panel), the main thrust of the Union’s argument is that its language should be adopted to prevent a waiver of its right to ratification. In this regard, it is the position of the Union that agency-head review cannot happen until an agreement is “executed,” and execution cannot occur until *after* the completion of the ratification process.³⁶

The Union also maintains its language preserves its “right” to ratify FSIP-imposed language. According to the Union, ratification is a statutory right and Federal court decisions have made clear that the Panel lacks the authority to impose language that would waive such rights.³⁷ The Union also claims that the FLRA has held that such a right exists under the Statute.³⁸ Finally, the Union states that this Panel has made the following observation on this issue in a recent decision:

The Authority has previously held that “there is no statutory restriction on the scope of bargaining available to a union following the membership’s ratification of a tentative contract.” *Dep’t. of the Air Force, Griffiss Air Force Base*, 25 FLRA 579, 592 (1987). This includes the right to ratify terms imposed by the Panel, notwithstanding §7119(c)(5).³⁹

The Union opposes Management’s language for Paragraph 15 because it states only that the parties “may” negotiate following a failed ratification vote. According to the Union, this language results in a waiver of the Union’s right to bargain following ratification because it creates an option to bargain rather than a duty. The Union also

³⁵ See Agency Initial Argument at 15-16 (citations omitted).

³⁶ See Union Initial Argument at 14.

³⁷ See Union Rebuttal at 9 (citations omitted).

³⁸ See *id.* at 8-9 (citing *Social Security Admin.*, 25 FLRA 238, 241 (1987)(citation omitted)(*SSA*)).

³⁹ See *id.* at 7-8 (citing *Dep’t. of Defense Educ. Activity*, 20 FSIP 060 (2020) (*DODEA*)).

objects to the Agency's proposed timeframe of 7 days for negotiations as insufficient. The Panel imposed a 15-day window in its *DODEA* decision and it should do so here.⁴⁰

Finally, with respect to the Agency's Paragraph 16, the Union argues that nothing in the language of 5 U.S.C. §7114(c)(2) allows a party to "toll" the 30-day period set forth therein. Thus, the Union argues Management's language should not be adopted.

III. Conclusion

The Panel imposes a modified version of the Agency's proposals. The parties agree that a negotiated agreement would be subject to ratification and that signatures would follow 3 days after that act. But, with respect to ratification, the parties appear to disagree primarily on two aspects: (1) does ratification include Panel-imposed language?; and (2) when is an agreement considered "executed" for purposes of the agency-head review process? For purposes of the Panel's resolution process it is unnecessary to resolve either question.

Turning first to ratification, the Union correctly notes that FLRA precedent holds that ratification is a right that flows from 5 U.S.C. §7102.⁴¹ As such, the Panel cannot hinder that right. But, contrary to the Union's insinuation, no clear precedent exists that establishes whether that right extends to language that is imposed by the Panel. To be sure, that right *may* exist, but it is not for the Panel to say. Indeed, in the Panel's *DODEA* decision, the Panel declined to impose language that outlined the contours of that union's right to ratification.⁴² But, it also declined to impose restrictions on ratification.

In *DODEA*, the Panel also declined to impose language that restricted the statutory agency head review process.⁴³ That edict is relevant to this dispute because the parties here are attempting to outline the "execution" of the agreement for purposes of triggering agency head review. Pursuant to 5 U.S.C. §7114(c)(2), agency heads have 30 days to review an agreement once it is "executed." Under FLRA case law, execution occurs on "the date on which no further action is necessary to finalize the agreement."⁴⁴ The parties' competing proposals in this dispute cloudy this foregoing standard because they arguably call for the Panel to assess when ratification should end and, as such, when execution/agency head review should begin.

⁴⁰ See *id.* at 10.

⁴¹ See *Social Security Admin.*, 46 FLRA 1401, 1413, 1415 (1993).

⁴² See *DODEA*, 20 FSIP 060 at 13 ("Because the law is not clear, the Panel does not take a position regarding the entitlement to ratify and its effect on language imposed by the Panel.")

⁴³ See *id.*

⁴⁴ *U.S. DOD, Ill. Nat'l Guard, Springfield, Ill.*, 68 FLRA 199, 203 (2015) (*citing Fort Bragg Ass'n of Teachers*, 44 FLRA 852, 857 (1992)).

Based on the above, and due to their conciseness, Management’s language for Paragraphs 13 and 15 will be imposed but with modification. In this regard, both parties agree to permit ratification, so language on that topic will remain. But, Management’s 13 will be altered to state that ratification will occur in accordance with “applicable law.” Similarly, the first sentence of Management’s Paragraph 15 will be stricken with the understanding that execution and agency head review will be conducted under the shield of law. Accordingly, the Panel makes the following alterations to Management’s Paragraphs 13 and 15 (new revisions in bold):

13. The tentative successor agreements are subject to ratification by the NLRBU’s membership **in accordance with applicable law**. Within 3 business days following ratification, the parties will sign the agreements.

15. ~~After execution, the parties agree that the executed term agreement may be referred to the NLRBU for ratification.~~ If the NLRBU fails to ratify the term agreement in whole or part the parties may negotiate a resolution. If the parties cannot reach resolution, the agency shall seek assistance from the FSIP within seven (7) calendar days after the date the NLRBU fails to ratify the term agreement. The parties may present their respective arguments to FSIP.

The Union also complains that the language in Management’s article 15 waives the Union’s right to bargain following ratification because it states that the “parties may negotiate a resolution.” The Panel does not believe that to be the case as it appears that this language does nothing more than recognize that the option to bargain is available. **However, to avoid any confusion, the Panel adds “at the option of either party” after “negotiate a resolution.”** The Union’s request to alter 7 days to 15 is based upon a misreading of *DODEA*: the Panel imposed 15 days in *DODEA* because employees were scattered throughout the world. The Union has made no such claim here.

Finally, Management’s Paragraph 16 will be stricken in full. The Agency proposes “tolling” the 30-day period for ratification under 5 U.S.C. §7114(c)(2) upon notification that the ratification process has begun. But, given that this 30-day period is a statutory requirement, it is unclear that the Panel has the authority to impose any alteration to that requirement. Accordingly, Management’s language will be rejected.

Paragraph 19, “Printing of Agreement”

Agency Proposal	Union Proposal
[No counter proposal]	Within 60 days of the Agency Head review, the Agency will submit jointly proofed versions to its printer(s) for

	prompt processing. The Agency will order enough copies of the agreement(s) to distribute to all unit employees, to supervisors and managers in all unit employees' chains of supervision, to all Union representatives, and to retain enough archive for new employees and as replacements as reasonable expected for the duration of the Agreement(s).
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I. Union Position

The Union proposes that Management print hard copies of the agreement for all bargaining unit employees and supervisors of those employees. The Union claims that this practice is an established industry standard and also demonstrates to the workforce the significance of this agreement. The Union also claims that Federal regulations require it to provide copies of the agreement to employees upon request.⁴⁵ So, it is only fair to require the Agency to pay for these copies.

II. Agency Position

The Agency requests that the Panel order the Union to withdraw its proposal because it represents a "wasteful" and "antiquated" practice. Management argues that the Union did not demonstrate that this is an established practice. And, the Agency disputes that the Union has regulatory obligations to provide copies of the agreement upon request. Finally, Management claims the Union can use its own dues to provide printouts of the agreement.

III. Conclusion

The Panel orders the Union to withdraw its proposal. The Union claims a requirement to provide hard copies of the agreement is established practice but provides no supporting data. The Union also claims – citing over 600 Federal regulations – that it has a legal obligation to provide hard copies of the agreement upon request. In the absence of any specific citation, the Panel declines the Union's tacit invitation to do a deep dive of the Code of Federal Regulations and will simply conclude that the Union has not met its burden to support adoption of its proposal.

⁴⁵ See Union Initial Argument at 19 (citing 29 C.F.R. parts 110.001-110.620).

Paragraph 21, "Executive Orders"

Union Proposal	Agency Proposal
Any provisions in these ground rules which were included to effectuate limitations contained in Executive Order 13837, on union representatives' official time entitlements, their right to utilize Agency property or other Agency resources (as defined in the Executive Order) for representational purposes, and their right to be reimbursed for travel, per diem, and lodging costs incurred in the course of representational activities, shall be immediately reopened should that Executive Order be rescinded or modified.	[No counter proposal]

I. Union Position

The Union asserts that this language is necessary to reflect the policies of the President who is in office during the life of the successor agreement. So, the Panel should accept it.

II. Agency Position

The Agency argues that the Panel should decline jurisdiction over this proposal because the Union did not previously present it during negotiations. The parties' last bargaining session was August 14, 2020, and the Union provided a "memorialized" document the next day outlining the parties' proposals: this proposal was not listed in that document.⁴⁶ According to the Agency, the foregoing shows that the parties never bargained this proposal or issue. As such, the Panel has no jurisdiction over this proposal.

III. Conclusion

The Panel will decline jurisdiction over this proposal. Under Section 7119 of the Statute and applicable Federal court precedent,⁴⁷ the Panel lacks authority to resolve disputes over proposals that were not negotiated to the point of impasse. The Agency has provided un rebutted evidence that demonstrates that the parties never negotiated the Union's proposal prior to invocation of the Panel process. Moreover,


⁴⁶ See Agency Rebuttal at 8-9.

⁴⁷ See *POPA v. FLRA*, 26 F3d. 1148 (D.C. Cir. 1994).

when the Agency filed its request for Panel assistance it provided the remaining disputed proposals: the Union's Paragraph 21 was not among them. The Union never informed the Panel during its initial investigation of this dispute that Paragraph 21 was missing; the first time the Union raised this issue was in its written substantive arguments to the Panel *after* the Panel had already asserted jurisdiction. Accordingly, the record does not establish that the parties bargained this proposal to the point of impasse. Indeed, it does not appear that the parties bargained this proposal at all.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as stated in the above Panel opinion.



Robert J. Gilson
FSIP Member

January 19, 2021
Washington, D.C.

Appendix to 20 FSIP 081 Transmittal Memorandum – Parties’ Proposals for Official Time

Agency Proposal	Union Proposal
<p>NLRBU bargaining team members will be entitled to official time in accordance with 5 U.S.C. 7131 for time spent in the negotiation of the collective bargaining agreements, including attendance at impasse proceedings, during the time the bargaining team members otherwise would be in a duty status. Nothing in this agreement will be construed as waiving statutory official time.</p> <p>The members of the NLRBU’s bargaining team will notify their supervisors of the bargaining schedule and will request in advance and receive approval of their official time. NLRBU bargaining team members will report all official time used in WebTA.</p> <p>NLRBU bargaining team members may not use more than twenty five percent of official time hours of their established annual tour of duty during negotiations of the collective bargaining agreements.</p>	<p>1. NLRBU bargaining team members will be entitled to official time in accordance with 5 U.S.C. 7131 for time spent in bargaining, which consistent with section 7131(a) includes caucusing after the beginning of each negotiating session and prior to the conclusion of each negotiating session, traveling to and from the negotiation periods, and participating in electronic communications with the Agency’s bargaining team for the purpose of negotiation.¹ Nothing in this agreement will be construed as waiving statutory official time.</p> <p>(a) No official time authorized by this Agreement shall count against any quantitative cap on the employee’s use of official time contained in Section 4 of Executive Order 13837.</p> <p>(b) Time spent by the NLRBU’s bargaining team to participate in any mediation sessions under the auspices of the Federal Mediation and Conciliation Service (FMCS) will be granted as statutory official time.</p> <p>(c) If either party seeks the assistance of the Federal Service Impasses Panel (FSIP), and FSIP orders the parties to resume negotiations, or</p>

¹ See, 2018 FSIP 036 (August 3, 2018) and 14 FLRA 191 (April 6, 1984).

if post-FSIP meetings are necessary to finalize contract language, NLRBU representatives will be entitled to statutory official time.

- (d) The Agency agrees to grant a reasonable amount of official time to NLRBU bargaining representatives who assist in the prosecution of any negotiability appeal that may arise during negotiations or as a result of Agency head review. Such official time shall not be deducted from any quantitative cap on the employees' use of official time established by section 4 of Executive Order 13837 in either the current or successive fiscal years.
- (e) The NLRBU's bargaining team may meet in an Agency field office for preparation or follow-through, but the Union will be responsible for its representatives' travel expenses for any such meeting. The Union will submit any requests to use local office space to Facilities and local field office management, and a decision will be based on the availability of space on the date(s) requested. If mission work necessitates the subsequent use of space allocated to the NLRBU's bargaining team, the Agency will promptly notify the Union and Facilities will assist in identifying alternate space for use by the Union.
- (f) The members of the NLRBU's bargaining team will notify their

	<p>supervisors of the bargaining schedule and will keep them informed of their official time needs. NLRBU bargaining team members will report their official time use in accordance with the WebTA MOU executed between the parties</p> <p>(g) For each week of scheduled bargaining (paragraph 5), the NLRBU bargaining officials with “seventy-five percent” official time, on average, will be entitled to use up to 20 additional hours of official time. Likewise, the NLRBU bargaining officials with “forty-percent” official time, on average, will be entitled to use up to 32 hours additional hours of official time.² This official time will be used (1) for preparation and follow-through on successor term agreement negotiations, including FMCS mediation and FSIP assistance, as necessary,³ (2) for preparation of contract documents submitted to the membership for ratification, pre-ratification training, ratification votes, and (3) contract-proofing and finalization.</p> <p>(h) NLRBU bargaining representatives shall be entitled to official time to prepare and/or pursue grievances,</p>
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² NLRBU bargaining representatives who are not members of the Executive Committee shall receive reasonable amounts of official time for meetings, preparation, follow-through and travel connected with these negotiations, including interactions with third-party entities, membership ratification and related training and votes, contract-proofing and finalization.

³ Statutory official time entitlements arising pursuant to in-person bargaining, mediation, impasse or other legal proceeding connected with term bargaining will not be charged to, or deducted from, the bank of official time.

	<p>including arbitration of those grievances, which may arise from any alleged violation of these term bargaining ground rules or claims of unfair or bad faith bargaining that arise during negotiations.</p>
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