United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of ENVIRONMENTAL PROTECTON AGENCY, GULF ECOLOGY DIVISION And NATIONAL ASSOCIATION OF INDEPENDENT LABOR, LOCAL 9	Case No. 20 FSIP 033

DECISION AND ORDER

This case concerns a request for Panel assistance filed by the Environmental Protection Agency, Gulf Ecology Division (EPA or Agency) involving the negotiations of the last 14 remaining articles in the Parties' successor collective bargaining agreement (CBA) between it and the National Association of Independent Labor, Local 9 (NAIL or Union). This dispute was filed pursuant to §7119 of the Federal Service Labor-Management Relations Statute (the Statute). The Federal Service Impasses Panel (Panel or FSIP) asserted jurisdiction over this dispute and directed the matter to be resolved in the manner discussed below.

BARGAINING AND PROCEDURAL HISTORY

The mission of the EPA is to ensure that Americans are protected from significant risks to human health and the environment, national efforts to reduce environmental risk are based on the best available scientific evidence, and that federal laws protecting human health and the environment are enforced fairly and equitably. The Union represents all of the bargaining unit employees (BUEs; approximately 46 impacted employees) at EPA's Gulf Ecosystem Measurement and Modeling Division (GEMMD) in Gulf Breeze, Florida. Specifically, GEMMD provides leadership and research in marine, estuarine, and watershed ecology and ecotoxicology to predict and assess the effects of human-generated stressors on the aquatic resources of the U.S.;

uses its research to help determine ecological conditions, evaluate rates and causes of declining systems, and predict future conditions under various alternative water quality scenarios; and works with communities, states, and the region to develop tools and provide a scientific basis for sustainable environmental management decisions that maximize economic, ecosystem, and social outcomes and resiliency. The Parties are covered by a collective bargaining agreement that was negotiated in 2001 (2001-CBA). The Parties continue to be covered by the terms of the 2001-CBA until agreement is reached on the terms of the successor CBA.

In June 2018, the Agency provided notice to the Union of its interest in reopening the 2001-CBA for negotiations. The Parties exchanged ground rules proposals. In September 2018, the ground rules were executed. In October 2018, the Union provided its initial proposals. Of the 47 Articles in the 2001-CBA, the Union proposed no change to the Preamble and 32 Articles, only slight modifications to 6 articles, and changes to 9 Articles. The Agency's initial proposals, provided in November 2018, envisions a much more streamlined CBA, proposing for the CBA to consist of only 8 Articles (instead of 47 Articles). The Parties negotiated on and off from December 2018 through March 2019 and engaged with the assistance of the Federal Mediation and Conciliation Services (FMCS) from May 2019 through October 2019. In April 2020, the Panel asserted jurisdiction over the 14 remaining provisions and ordered the Parties to resolve the impasse through Written Submissions. The Parties were directed to provide their submissions by April 27, 2020, and their rebuttals by May 11, 2020. The Union filed a written motion for extension of time; 60 days beyond the April 27, 2020-due date. The basis for the request was because all of the employees had been teleworking due to Covid-19, and it was difficult to gather all of the relevant information necessary to respond. The Agency confirmed VPN challenges raised by the Union but also opposed the requested extension. The Panel granted a 3-week extension to both the submission and the rebuttal.

Both Parties provided timely submissions. However, on June 3, 2020, the Agency filed a motion to strike the Union's rebuttal submission. In its procedural order, the Panel directed the Parties to submit a statement of position (no more than 28 pages, plus attached evidence[1]) and a rebuttal (no more than 14 pages) to resolve the impasse over the 14 articles of the Parties' CBA. The Union's SOP submission was 25 pages, plus 37 attachments (including 17 affidavits) for a total submission of over 500 pages. In its motion, filed after the rebuttals were filed, the Agency argues that the Union's statement of position violated the intention of FSIP's page limitation directive as the Union's 17 affidavits are comprised almost entirely of arguments and positions. The Agency argues that the Union extended its argument into 17 affidavits, the Union's SOP, in essence, is many dozens of pages longer than the Panel's directive allowed. The Agency also provided an affidavit with its rebuttal. The Agency's affidavit is 19

[1] The Panel's procedural letter states in FN2 that Evidence may include, but in not limited to affidavits, reports, charts, graphs, and comparable data.

pages long, in small font. Just as the Union arguably used the affidavits, not simply to support their arguments, but to present their arguments, the Agency's affidavit goes beyond providing support.

The Panel's procedural letter states (in FN2) that Evidence may include affidavits. The Panel provides no guidance on the purpose of affidavits or limit to the number of attachments. While it appears to the Panel that both Parties may be avoiding the page limitation of the submissions by taking advantage of the opportunity to provide attachments, since the Parties have not technically violated the Panel direction by providing their affidavits, the Panel rejects the Agency's motion regarding the affidavits.

The Panel's directive was that rebuttals were to be no longer than 14 pages and were to be double-spaced. The Agency argues that the Union's submission was 14 pages long. However, the Union's submission, a Microsoft Word document, is not actually double-spaced, as required in the Panel's instructions. When the document is corrected to be double-spaced, it appears to actually be 18 pages long. The Agency argues that the Union has failed to comply with the Panel's procedural directive on submissions. The Agency asks that the Union not be rewarded for its disregard for the Panel's instructions. As such, the Agency moved that the Panel not consider the Union's rebuttal. The Agency noted that in 2018 FSIP 059, the Union submitted an 11-page document after being instructed to submit a 10-page document and the Panel decided not to consider the last page. In this case, the Agency argues that because the Union has attempted to conceal that its submission exceeded the page limitation, the Agency moves that the Panel to decline to consider the Union's entire rebuttal.

The Panel takes notice of the discrepancy in the Union's filing, and takes the Agency's concern under advisement. However, the Panel declines to reject the entire Union rebuttal.

PARTIES ARGUMENTS AND PANEL DECISIONS

There are parts or all of 14 articles that the Parties could not reach agreement over. Due to the sheer number of issues in dispute, the Parties' proposals will not be set forth in this memo. Rather, they are attached to this document.

Article 7 – Midterm Negotiations

This article provides for procedures and requirements in conducting midterm negotiations through the life of the CBA should there be a proposed change in conditions of employment that triggers a bargaining obligation under 5 U.S.C. Chapter 71. Both Parties proposed procedures for bargaining. In essence, the Parties disagree over the notice and bargaining schedule, should the Union choose to bargain over the proposed change. The current 2001-CBA provides for 10 work days between each

administrative step. Under the Agency's schedule, the Agency is essentially providing for 3 work days between each step: Parties could begin to bargain in as little as 23 days (including notice, briefing, and exchange of proposals) after the proposed change is served on the Union. Under the Union's proposal, the Union has shortened the schedule by providing for 10 calendar days between each step: bargaining could begin in as little as 40 days. The Agency failed to demonstrate how the current contractual timeframes (which have been in place since 2001) inhibit their ability to effectively implement changes. While the Union's affidavit supports a preference for the current procedures, the Union provides little more than speculation that a 3-workday time frame would be impractical. The Panel favors a more efficient and effective approach to bargaining. Both Parties have proposed a shortened time frame from the 2001-CBA. The Panel orders the Parties to adopt he Agency's proposal with modifications:

- Adopt Section 1.
- Adopt Section 2.
- Under Section 3, the Union shall have 5 workdays (instead of 3) to submit a written demand to bargain.
- Section 4.E. (3) and (4), and Section 5.J. reference entitlements to Official Time. Those references are to be removed. Official Time is addressed by the Parties in Article 4, which has been agreed to by the Parties and is not before this Panel.
- Section 5.L. addresses Caucuses. The last sentence is to be removed. That sentence limits holding caucuses at the begin or end of the day. The Parties should be free to determine the best time, within the flow of the bargaining, to hold a caucus.
- Section 5.O. addresses Impasses. The Parties will edit the language accordingly, "The Union's failure to file a request for assistance with the FSIP within five (5) workdays of release by the FMCS mediator may constitute a Union waiver."

Article 11 - Work Schedules

This article provides the work schedules that will be available and procedures for requesting and approving schedules. The Agency offered no challenges or concerns with the current terms regarding work schedules, and the Agency confirms that no grievances have been filed under the 2001-CBA over work schedule decisions. Nevertheless, the Agency offers a proposal that is significantly different from the 2001-CBA. Under the Agency's proposal, the Agency is attempting to establish a new standard for work schedule decisions, which would not be subject to challenge or review (i.e., not grievable); the Agency rejects adding any new or additional schedules or

flexibilities (e.g., gliding schedule); the Agency offers a new procedure (e.g., submission of a particular request form) for an employee to obtain approval for a Maxiflex schedule; and, most significantly, the Agency proposes that decisions of the manager not be subject to review or an arbitrator's judgement (i.e., not grievable).

The Union's proposal essentially maintains the terms of the 2001-CBA, with a few notable additions. The Union notes that the recording of time should now be done in the current T&A system: People Plus Tracking System. More significantly, the Union proposes the availability of a Gliding Schedule, which is not currently available under the terms of the 2001-CBA.

The Agency failed to demonstrate how the current contractual work schedule terms and procedures inhibit their ability to effectively operate. In its own statement of position, the Agency notes that there have been no grievances over work schedules in 19 years. In its submission, the Agency reminds the Panel that employees have no statutory right to a schedule and, therefore, "we should not lose focus on the reason employees have jobs is to contribute to the efficient and effective fulfillment of the Agency's mission." For that reason, the Agency asserts that their proposals are "superior in all facets to the 2001 contract."

The Panel orders the Parties to adopt the Union's proposal (which is essentially the 2001-CBA terms), with modifications:

- Gliding schedules (Section 3(b)(4)) will not be imposed. While the Union demonstrated an interest in the employees have the gliding schedule available, the Union failed to demonstrate the need for or, more importantly, the impact on the efficiency of the service in offering gliding schedules.

Article 12 - Credit Hours

This article is directly related to the previously addressed work schedule article above. This particular article, as proposed by the Agency, would only apply to credit hours granted under the Maxiflex program: the availability and procedures for requesting and approving. The Union has essentially proposed the terms of the 2001-CBA, making the credit hour option available to not only employees approved to work a Maxiflex schedule, but also applying to employees approved to work a Flexitour and (as proposed by the Union above) a Gliding schedule.

The Agency offered no issues or concerns that need to be addressed with the changes they have offered in this proposal. Nevertheless, the Agency argues that their additional requirements are "more favorable to employees." The common change

offered by both Parties is the requirement that the earning of credit hours must be pre-approved by the supervisor. Under the current 2001-CBA, Section 4, employees are allowed to work the credit hours without pre-approval of the supervisor. The Union's proposal (Section 4) addresses that by requiring that the employee must coordinate with their supervisor for the pre-approval of credit hours. The Agency's proposal requires pre-approval, introduces a new form that must be completed by the employee (i.e., Maxiflex Pay Period Time Sheet, used in addition to the T&A system) and also limits how many hours a supervisor would normally be allowed to approve (e.g., 2 hours).

While both Parties offered language that would increase the controls of management, by requiring preapproval, the Agency's proposal, without justification, is more limited in eligibility, requires unnecessary paperwork, and introduces an artificial cap on the supervisor's approval without explanation. The Panel orders the Parties to adopt the Union's proposal. The Parties should be advised that as the Panel has not imposed the Gliding schedule proposed by the Union, credit hours would not be available for a Gliding schedule.

Article 16 – Annual Leave

This article addresses rights and obligations regarding annual leave. In accordance with OPM guidance, an employee may use annual leave for vacations, rest and relaxation, and personal business or emergencies. An employee has a right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken. The Union's proposal is essentially the terms of the 2001-CBA, except additional information added to Emergency Leave requirements. The Agency offers a revised article. The main distinction between the proposals surrounds the conditions to consider in granting a leave request and emergency leave requirements when an employee can be called back from leave to perform work.

The Parties have acknowledged that the 2001-CBA procedures seemed to have worked effectively – there were no examples provided that leave was improperly denied. Using the 2001-CBA as the starting point, under Section 4, the Union's criteria for reviewing and approving leave is consideration of workload and staffing. Under the Agency's proposal, the supervisor is to consider, "personnel not available to perform work; office coverage; work priorities; emergencies; time-sensitive assignments; work assignments; the need for team efforts; the need for meeting in person; and other operational needs that involve the work of the Agency at the employee's work unit." Under the Agency's proposal, there are so many criteria, both within and outside of the employee's control, it would be difficult to imagine a supervisor ever granting an

employee annual leave. Ultimately, supervisors are responsible for the overall planning, coordination, and approval of their employees' annual leave throughout the leave year so that the agency's mission and employees' needs are met, and so that employees do not approach the end of the leave year with a significant amount of annual leave that must be used or forfeited (i.e., “use or lose”). With so many factors to consider, a supervisor is more likely to deny the request, forcing forfeiture of leave and restoration actions[2]. As neither party suggested that the use of leave and approval of leave has been a problem over the last 19 years, adding more criteria that will likely create issues isn’t favorable. The Panel orders the Parties to maintain the current criteria (Union proposal; 2001-CBA, Section 4).

The Parties are in disagreement over how Annual Leave used for emergencies should be handled. Under the 2001-CBA, Section 4, approval of request for annual leave for unforeseen emergency reasons will be granted as the circumstances warrant, if possible. The Union’s proposal maintains that language and adds procedures for requesting leave during a personal emergency; they must notify the supervisor or designated individual normally within two (2) hours after the start of the shift. Under the Agency’s proposal, approval of requests for annual leave for unforeseen emergency reasons may be granted, as the circumstances warrant, and if possible. The Agency proposes procedures for requesting leave during a personal emergency; before the employee’s scheduled tour of duty or, if that isn’t possible, the employee must make the request as soon as possible. The Agency goes on to propose that if the employee is physically unable to make the request himself/herself, the employee must take proactive steps when possible to ensure that the supervisor or designee is notified.

The Agency has no obligation to grant the leave requested, even in an emergency situation. The Panel orders the Parties to adopt language that reflects that the approval is not a requirement; the request may be granted. By definition emergencies are serious, unexpected, and often dangerous requiring immediate attention. If an employee is requesting leave under the conditions that meet the definition of “emergency”, the least requirement necessary to facilitate the supervisor to make the determination of approval is preferable. The Panel orders the Parties to adopt language that provides for the request of leave.

Both Parties proposed language regarding calling employees back to work when they are on approved annual leave. The Agency proposes that they will only call employees back when the Agency determines that it is necessary for the employee to perform a specific time sensitive work duty. The Union proposes (same as 2001-CBA) that the employer will make every reasonable effort to avoid calling an employee back from leave. The Union’s language provides no standard. The Agency’s language

[2] Forfeited annual leave may be restored under 5 U.S.C. 6304(d)

provides a standard (i.e., necessary for the employee to perform a specific time sensitive work duty). The Panel orders the Parties to adopt the Agency's section 9 regarding call-backs.

In sum, the Panel orders the Parties to adopt the following:

- Union proposal sections 1-3.

- Union proposal section 4, with modification for emergencies – the request may be granted, as circumstances warrant. An employee unable to report for duty because of a personal emergency can request annual leave by notifying the supervisor or designee.

- Union proposal sections 5, 7, 8.

- Agency - section 9. Call Back From Annual Leave.

Article 17 – Sick Leave

This article addresses rights and procedures for requesting and approving sick leave. Sick leave is a paid absence from duty, granted to federal employees (full time and part-time) by Statute (5 U.S.C. chapter 63, subchapter I) and OPM regulations (5 CFR, part 630, subparts B and D). An employee is entitled to use sick leave for: personal medical needs; family care or bereavement; care of a family member with a serious health condition; and adoption-related purposes. If the employee complies with the notification and medical evidence/certification requirements, the agency must grant sick leave under the regulations.

There are a few major differences between the Agency's and the Union's proposal. The procedures executed under the 2001-CBA allowed an employee requesting sick leave to provide notice to their supervisor up to 2 hours after the start of the employee's shift. The Agency proposed procedures requiring that the employee request, approve and schedule the sick leave (presumably in the electronic system) before the employee is absent from work. Under the Agency's section 3, unless it is not possible to make a request for sick leave before the employee's scheduled tour of duty (e.g. the employee is totally incapacitated and unable to communicate to the employer), the employee must make the request before the work tour. If the employee is physically unable to make the request himself/herself, the employee must take proactive steps; someone else needs to make the notification for the employee.

The Union argues that the Agency failed to demonstrate that there was a problem with the 2001-CBA procedures. Further, the Union argues that it is impossible for employees to meet the request and approval requirement during up to 40% of the pay period[3], because the electronic leave system is unavailable to employees. The Agency did not refute that the timekeeping system denies employees the ability to submit a leave request for several regular days each pay period.

The Union proposes, consistent with the terms of the 2001-CBA, that sick leave will be granted if the employee furnishes notice to the supervisor no later than two hours after the start of the employee's shift. The Union's proposal goes on to state that the 2-hour window would not apply in an emergency situation that precludes the 2-hour notification. The Union argues that this procedure, providing for a 2-hour notification window, has been effective in this work environment: employees perform scientific research with flexible schedules revolving around the core hours[4].

The Agency argues that in order to properly manage the work, the supervisor needs to know who is coming to work before it is two hours into the workday. A supervisor should be able to expect staff to be working during their assigned tour, especially during the core hours, unless leave has been approved. It is not unreasonable for a supervisor to expect an employee to provide notice when they are unable to come to work due to medical incapacitation as defined by the Statute. It is unreasonable, however, to demand the employee to first meet a requirement that, 40% of the time, they are unable to meet due to the Agency's systems that they are relying upon to facilitate the employee meeting the requirements.

The Panel orders the Parties to adopt the request procedures in Section 2 of the 2001-CBA, with modification:

> Earned sick leave will be granted to employees when they are incapacitated and unable to perform their duties provided that employees are not reporting for work due to circumstances described in applicable laws and regulations. In requesting sick leave, employees must furnish notice to the supervisor or the supervisor's designee as soon as possible prior to the start of the employee's shift, but no later than 1 hour before the start of the employee's shift, unless emergency conditions preclude such notification.

The Parties are in disagreement over the medical documentation needed to substantiate the request for leave. In accordance with OPM regulation, an agency may grant sick leave only when supported by administratively acceptable evidence[5]. An

[3] In an affidavit provided by the Union, and the Agency did not refute, the employees are hindered from entering leave requests for approval for approximately 40% of each pay period due to the Agency's PeoplePlus (PPL) timekeeping system being offline from Weds — Fri during the second week of every pay period, and the first Monday of each pay period.

[4] Core hours are the designated period of the day when all employees must be at work, unless on approved leave.

[5] 5 CFR 630.405 (a)

agency may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence. If the employee fails to provide the required evidence within the specified time period, he or she is not entitled to sick leave. Both the Agency's Section 5 and the Union's Section 5 proposals provide that normally the employee would not be required to provide a medical certificate furnished by a doctor to meet the requirement of administratively acceptable evidence qualifying for sick leave. The Union's proposal (similar to the 2001-CBA) outlines the exceptional times where additional medical documentation would be required: leave abuse; to prove capability to return to work after extended leave usage; and questionable circumstances surrounding the leave request. The Agency argues that the Union failed to recognize another common exception found in most agencies and available to agencies under 5 CFR 30.405 - absence in excess of three (3) workdays.

The Panel orders the Parties to adopt a modified version of the Agency's Section 5. The Agency should have an opportunity, at their option, to request the employee to provide a medical certificate, as defined by 5 CFR 630.201(b), for absences in excess of three (3) workdays.

Section D. Medical Certificate.

1. Medical Certificate - As defined by 5 CFR 630.201(b), a "Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment."

2. When a Medical Certificate Is Required.

a. The supervisor may require a medical certificate for any absence in excess of three (3) workdays.

b. An employee must provide administratively acceptable evidence or medical certification for a request for sick leave no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

Supervisors must exercise the option of requiring medical documentation with discretion and sensitivity. During the current COVID-19 Pandemic, the Occupational Safety and Health Administration (OSHA) has provided guidance discouraging employers from requiring their employees to visit medical doctors in order for the employees to secure medical documentation. "Guidance on Preparing Workplaces for COVID-I9" states:

> "Do not require a healthcare provider's note for employees who are sick with acute respiratory illness to validate their illness, or to return to work, as healthcare provider offices and medical facilities may be extremely busy and not able to provide documentation in a timely way." "Maintain flexible policies that permit employees to stay home to care for a sick family member...."

In sum, the Panel orders the Parties to adopt the following with regard to Article 17 – Sick Leave:

- Accrual of Sick Leave - Adopt the provisions of the 2001-CBA, Section 1.
- Requesting Sick Leave - Adopt the sick leave request procedures in Section 2 of the 2001-CBA, as modified above.
- Granting of Sick Leave – Adopt the provision of 2001-CBA, Section 3.
- Evidence to Support Sick Leave - Adopt the provision of Section 5 of the 2001-CBA. Add the modified version of the Agency's Section 5 above regarding medical certificate.
- Adopt the provision agreed upon by the Parties regarding the Voluntary Leave Transfer Program (VLTP) under 5 CFR 630.901.
- Adopt the provision agreed upon for the Bone Marrow or Organ Donation program under 5 U.S.C. Section 6327.

Article 19 – Performance Management

This article addresses performance plans and performance-based actions. The 2001-CBA regarding Performance Evaluations is quite long; 34 sections. Both Parties proposed a more streamlined version of the article. The Union proposed 12 sections. The Agency proposed 6 sections. The Union's and the Agency's sections 1-5 are essentially the same, both offering more streamlined provisions for performance management. The Parties begin to diverge with Agency's Section 6 and Union's section 8, addressing unacceptable performance. The major areas of disagreement concern the establishment of a performance assistance plan (PAP) before putting the employee on a performance improvement plan (PIP) and the duration of time an employee can be on a PIP.

The law provides for two different processes for taking performance-based actions against a federal employee. If a performance-based action is taken under Title 5 CFR Part 432, a formal opportunity to improve period is required. If a performance-based action is taken under Title 5 CFR Part 752, an opportunity period is not required.

The Parties agreed in the 2001-CBA, that a Performance Assistance Plan (PAP) would be used to provide a poor performing employee notice of poor performance and to document counseling. An informal counseling memorandum would notify an employee that his/her performance in at least one critical element has fallen below the acceptable level. The PAP identifies deficiencies and provides assistance by describing the actions needed to improve performance to an acceptable level. A PAP is considered informal because it does not constitute a formal opportunity to improve performance. Under the Union's proposal, the PAP opportunity period would last at least 45 days.

If an employee's performance does not improve after the PAP, the Agency would still need to give the employee a formal opportunity to improve his or her performance, providing some of the same notifications and support. Many agencies have adopted the use of the Performance Improvement Plan (PIP) to provide the formal opportunity to improve period. This formal period is designed to give the employee an opportunity to bring his or her performance up to an acceptable level. It is also the supervisor's opportunity to clearly and formally express his or her expectations and the consequences of not meeting those expectations. If the employee fails to improve to an acceptable level by the end of the opportunity period, further action is warranted, including removal. Under the 2001-CBA terms, and the Union's proposal, the PIP period would be not less than an additional 120 calendar days.

The Agency primarily relies on the Trump Executive Order 13839 (EO 13839) as their basis for disagreement over the PAP and the length of the PIP opportunity period. Under EO 13839, removing unacceptable performers should be a straightforward process that minimizes the burden on supervisors. The OPM July 5, 2018-guidance further states that the EO 13839, "precludes agencies from entering into any agreement that would purport to bind the agency to … require affording employees any additional performance assistance period (e.g. PAP, etc.) or similar informal period to demonstrate improved performance prior to the initiation of an opportunity period under 5 U.S.C. 4303(c)(6)." The EO further discourages agencies from entering into an agreement that affords a formal opportunity period (e.g., PIP) longer than 30 days.

The Agency has offered no PAP, arguing that the additional informal opportunity period is unnecessary and in conflict with good public policy (i.e., EO 13839). While the Agency has offered a PIP period, the Agency's formal opportunity period would be 30 days, consistent with EO 13839, as opposed to the 120-day PIP period in the 2001-CBA and the Union proposal. The Agency argues that the Union's proposals to have a 45-

day informal PAP opportunity period, plus a 120-day formal PIP opportunity period makes taking performance-based actions time-consuming and difficult. The Agency asserts that a 30-day formal PIP period is sufficient for an employee to demonstrate improvement.

The Union disagrees. Most of the employees in this bargaining unit are technically-trained science professionals who conduct research that may involve experimental design, experimental execution, data analysis, animal care, technical laboratory protocol execution, quantitative sample analysis, field sampling, literature interpretation and technical writing of many kinds. The Union argued that the complexity of the work for these research scientists makes it difficult if not impossible for a supervisor to measure improvement in just 30 days.

While the EO 13839 does not mandate a 30-day PIP period, it does recommend a 30-day period. The Panel has now consistently written that the President's EOs on labor relations matters are an important source of public policy and the Panel, when appropriate, has given weight to the principles espoused in those EOs. This Panel has made no ruling on having a PAP, however, the Panel has consistently limited the formal opportunity time period to improve to 30 days (e.g., 20 FSIP 012). The Union claimed that a 120-day formal improvement period (in addition to the 45-day informal PAP period) is necessary because of the complex nature of the employees work as scientific researchers; however, the Union did not provide any supporting data to conclude that a 30-day period would not, in some circumstances, be sufficient, e.g., the number of employees placed on a PIP during the term of the Parties' contract and time needed for each employee to demonstrate improvement (particularly when that time exceeded 30 days). In the absence of supporting information, the Panel will provide weight to the EO 13839, section 4(c), while also providing an opportunity to expand the period if appropriate given the complexity of the work. The Panel orders the Parties to adopt just the PIP formal opportunity period, and that opportunity period be no less than 30 days.

In addition to the timeframe for being on a PIP, the Parties disagree over the content of the PIP. The Union proposed a prescriptive list of elements that must be in the PIP. The Agency proposal offers very little in terms of required content to the PIP. The PIP formal opportunity period is designed to give the employee an opportunity to bring his or her performance up to an acceptable level. It is also the supervisor's opportunity to clearly express his or her expectations and the consequences of not meeting those expectations. In order to effectively provide formal notice of the improvement opportunity, the Panel orders the Parties to adopt the following content in the PIP:

- The duration of the opportunity period for the employee to demonstrate acceptable performance.

- A statement of the specific critical element(s) for which performance is at an unacceptable level.
- A description of the specific actions needed to improve performance to an acceptable level.
- The performance requirement(s) and, if applicable, standard(s) that must be attained in order to meet the acceptable level.
- The consequences of failing to improve during the opportunity period.
- The type(s) of assistance that will be offered to the employee to improve performance. This assistance may include formal training, on-the-job training, counseling, and coaching.

In sum, the Panel orders the Parties to adopt the following with regard to Article 19 – Employee Performance:

- Agency section 1, modified to eliminate the term "master" in master collective bargaining agreement.
- Section 2, definition as proposed by both Parties.
- Agency section 3, modified in 3(B) by eliminating "reserved management right".
- Agency section 4.
- Agency section 5.
- Agency section 6, Unacceptable Performance – modified in section 6 (D) to provide a PIP formal opportunity period of no less than 30 days.

Article 21 – Disciplinary Action

This article addresses procedures for taking disciplinary actions and the maintenance of those actions in the personnel files of employees. The Union proposes to maintain the 2001-CBA, including the definition of a disciplinary action: letters of caution, letters of reprimand, and suspensions without pay of 14 days or less. Under the Union's proposal, all disciplinary actions are grievable. The Agency's proposal does not include letters of admonishment (i.e., letters of caution) as discipline, which means those supervisory counseling tools could not be considered discipline, are not maintained in an employee's personnel file and, most importantly, are not grievable. The Panel orders the Parties to limit disciplinary actions in the CBA to include the formal disciplines: letters of reprimand and suspensions of 14 days or less. All other informal disciplines are just that, informal.

The next area of dispute involves taking disciplinary action against an employee. The 2001-CBA and the Union's proposal includes the standard of "just and sufficient

cause". The principle of the "just cause" standard is a common disciplinary standard imposed to ensure actions are just and appropriate. These Parties have adopted a "just and sufficient cause" standard since at least 2001. The Parties presented no evidence or argument regarding the use of the standard or concerns with the execution of that standard. With no concerns raised, the Panel orders the Parties to maintain the current contract standard.

The next area of dispute concerns the length of time that a written reprimand will be retained in the Official Personnel File (OPF). Under the 2001-CBA and the Union's proposal, the letter of reprimand is retained for 2 years. The Agency has proposed a 3-year retention period, citing consistency with EO 13839[6]. Neither party presented evidence to demonstrate the appropriateness or challenges with a 2-year versus a 3-year retention. As discussed above, absent persuasive evidence otherwise, the Panel is inclined to provide weight to the EO 13839. The Panel orders the Parties to adopt a 3-year retention period for written reprimands.

The next area of dispute is over the number of days in advance the Agency would be required to provide an employee before suspending the employee for up to 14 days. Both Parties agree that the employee should be afforded advanced notice. Under the 2001-CBA and the Union's proposal, advanced notice was defined as at least 15 days. Under the Agency's proposal, they simply state the advanced notice will be provided, with no time frame commitment. The Agency provided no explanation for the change in the time frame commitment. The Agency provided no issues, concerns, or examples where length of the notice has been problematic. The Panel orders the Parties to maintain the current contract language concerning advanced notice for a disciplinary action.

The next area of dispute involves an employee's right to representation, including a Union representative. While the Agency acknowledges in their proposal the right to representation, they do not include mention of a NAIL union representative. The 2001-CBA and Union proposals include that notation. While the bargaining unit employee's right to a Union representative has not changed, the Agency provided no explanation why they would not mention that in the CBA. The Panel orders the Parties to maintain

[6] Section 2(e) provides - When taking disciplinary action, agencies should have discretion to take into account an employee's disciplinary record and past work record, including all past misconduct -- not only similar past misconduct.
Section 5 of EO 13839 provides that agencies shall not agree to erase, remove, alter, or withhold **from another agency** any information about an employee's performance or conduct in that employee's official personnel records, including, an employee's Official Personnel Folder and Employee Performance File, as part of, or a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.

the current contract language concerning right to representation in responding to a disciplinary action.

In sum, the Panel orders the Parties to adopt the following with regard to Article 21 – Disciplinary Action:

- Union section 1, modified to read as follows: Disciplinary actions are defined as letters of reprimand and suspensions without pay of 14 days or less.
- Union sections 2-4
- Union section 5, modified to read that the letter of reprimand will be retained in the OPF for up to three (3) years.
- Union sections 6–7

Article 22 – Adverse Action

This article addressed procedures for taking adverse actions, including due process requirements. An adverse action is a removal, suspension for more than fourteen (14) days, furlough without pay for thirty (30) days or less, or reduction in pay or grade. “Furlough” means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons. This is a short article, generally following the rights and procedures covered in 5 U.S.C. Chapter 75 (i.e., the MSPB statute and regulations).

The Union essentially proposed the 2001-CBA language, with additional language to address furloughs due to unforeseen circumstances. The Union’s proposed language would allow the Agency to provide a shorter than 30-day advanced notice in the case of the need to conduct a furlough due to unforeseen circumstances (e.g., a lapse in funding). The Agency did not agree to that procedural reprieve.

The Agency’s language goes beyond following the statutory requirements. They also seek to include policy principles articulated in the EO 13839 (e.g., employees shall maintain high standards of integrity). The Union did not agree to incorporate these policy principles in the CBA. The Panel orders the Parties to maintain the prior 2001-contract language, without modification. Neither Party demonstrated the need to change the procedures.

Article 23 – Negotiated Grievance Procedures

This article addresses, among other things, the procedures for filing within the Negotiated Grievance Procedure (NGP), representation in the NGP, and exclusions from the NGP. The Statute (5 U.S.C. 7121) requires that a collective bargaining agreement must provide procedures for the settlement of grievances. Those procedures shall be the exclusive administrative procedures for bargaining unit employees to resolve grievances which fall within its coverage of the article.

The Union has proposed to continue the terms and procedures in the 2001-CBA. The Parties have relied on the established procedures for almost 20 years. The Union notes that over the past 10 years there were only 2 grievances filed, which were resolved at the first step, and only 1 case in the 20 years that was not resolved through the grievance procedure and was taken to an outside arbitrator. Nevertheless, the Agency has proposed many changes to the NGP article.

The first substantive difference concerns the exceptions to the grievance procedure. While the Parties are in agreement over most of the exclusions, the Agency seeks to also exclude from the NGP: (1) performance progress reviews and (2) the receipt or non-receipt of an award.

The Panel has now consistently stated that it will impose a "broad scope" grievance procedure consistent with *AFGE*[7], unless the moving party to limit that scope is able to "establish convincingly" the need for a limited scope. The burden for exclusion turns on "the particular setting" of the dispute. The Panel is not bound by *stare decisis* and reviews each case separately based on the facts and evidence of that case. It is up to the Parties, particularly the party moving to exclude from the NGP, in each case to establish convincingly that the Panel should adopt their proposals.

In the instant case, the Agency argues that progress reviews shouldn't be grievable because they are not decisions or rating, but are a review of discussions of the employee's progress under the performance plan. The Agency offered no data or evidence on how many progress reviews have been challenged and how disagreements over the reviews were resolved. There doesn't seem to be a problem with the current process. The Agency failed to meet the burden in order to establish the need to exclude progress reviews from the NGP. The Parties will not be ordered to add progress reviews to the list of exclusions.

[7] AFGE Local 225 v. FLRA, 712 F. 2d 640 (D.C. Cir 1983)(AFGE).

The Agency also seeks to exclude awards from the NGP. While the Agency cites the EO 13839[8] throughout their submission to support other topics, the Agency did not rely on this policy in support of its proposal to exclude awards, nor did the Agency present any argument to support the exclusion of award under this CBA. The Agency failed to meet the burden in order to establish the need to exclude awards from the NGP. The Parties will not be ordered to add awards to the list of exclusions.

The next area of dispute concerns a representative of the employee in the NGP. The Statute (7121(b)(1)(C)) has been interpreted by the Authority to allow either an aggrieved employee to file a grievance on their own behalf or to have the Union file a grievance on their behalf. An aggrieved employee cannot select their own outside representative (outside of the union; the exclusive representative) to file on their behalf. The Agency argues that section 5 of the Union's proposal is problematic because it provides that the employee can file on their own behalf or the employee can be represented by "a person approved by the Union." The Agency argues that such designation by the Union is not allowed under the Statute. The Agency's argument is misplaced. The Statute allows a union to select its representatives. This proposed language allows the employee to be represented by the Union or by a designee of the Union. That is consistent with the Statute. The Panel rejects the Agency's arguments regarding Section 5.

The remaining dispute in this article concerns the time limits and steps to processing a grievance. The Union proposes to maintain the procedures that have been in place for 20 years. The Agency proposes new time lines and procedures. The Agency argues that the current standards and timeframes have "the potential to lead to confusion and litigation". The Agency makes that assertion, however, after 20 years of operating under these contractual procedures, the Agency provided no evidence or examples of confusion or litigation. The Panel orders the Parties to maintain the current 2001-CBA procedures.

Article 24 – Arbitration

This article addresses procedures for invoking and engaging in arbitration. The Union proposes that the terms of the 2001-CBA continue. After being in effect for 20 years, the Parties have only had 1 case go to arbitration under the CBA. The Union argues that the current terms are simple and straightforward. The Union's proposal

[8] EO 13839 directs agencies to remove certain matters from the grievance procedure. Under section 4 of the EO, it requires agencies to remove disputes over "ratings of records" or "the award of any form of incentive pay, including cash awards; quality step increases; or recruitment, retention, or relocation payments the negotiated grievance procedure."

provides: a ten (10) workday time frame from receipt of the decision completing the negotiated grievance procedure to invoke arbitration; the moving party will request a list of seven (7) arbitrators from the FMCS; the Parties will select an arbitrator within ten (10) workdays of receipt of the list of arbitrators; a flip of a coin will decide which party will strike first from the list; a transcript of the hearing will be made by mutual consent of the Parties with the cost borne equally (one party at their own cost may have a transcript); arbitration hearings will normally be held on the Agency's premises during the regularly scheduled workweek; and the cost of the arbitrator's fee and expenses will be paid by the losing party; cost will be borne equally by the Parties in the case of a split decision.

The Agency proposes a significant number of changes. The Agency's proposal: provides a longer thirty (30) day timeframe for invoking arbitration (however, the Agency has created the right for the Agency to declare a matter moot – no longer arbitrable- should the Agency be delayed in providing its grievance answer for an extended period of time and the Union doesn't move the matter to arbitration without the Agency answer); requires the Parties to share the cost of arbitration (including the cost of renting space outside of the Agency space to hold the hearing); commits to paying the grievant' s expenses to participate, but not the Union representative[9]; sets the hearing date within 90 days (even if the arbitrator hasn't agreed to those dates); limits the matters that the arbitrator can hear to just those matters raised at the earliest possible step (Step 1); requires the procedural matters be bifurcated from the merits; and requires that the arbitrator's decision be consistent with law, rule, regulation, AND executive orders.

Where the terms of this article in the current 2001-CBA is barely over 1 page, the Agency has proposed a 7-page procedure. The Union argues that the additions and modifications are unnecessary and not relevant to this local Union in Gulf Breeze, Florida. The Agency argues that the additional procedures and details will increase the possibility of less disagreement. However, the Agency presented no evidence that their basis for change (i.e., less disagreement) even exists. There have been nearly no arbitrations in this unit. Where there was 1 case, the Agency did not submit evidence that the procedures failed the Parties or inhibited efficient and effective resolution of the grievance. With no evidence to support the need for the significant changes, the Panel orders the Parties to maintain the current 2001-CBA terms regarding Article 24 – Arbitration.

[9] The basis for some of the Agency's proposed changes is the EO 13837, which asserts that Agency' should not pay for travel and per diem for union representatives to performance representational duties.

Article 32 – Drug-Free Workplace

This article addresses policy and procedures around drug testing in the workplace. On September 15, 1986, President Reagan signed Executive Order 12564 (EO 12564), establishing the goal of a drug-free Federal workplace. The EO 12564 made it a condition of employment for all Federal employees to refrain from using illegal drugs on or off-duty. That EO also required the head of each Executive agency to develop a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the government, the employee, and the general public. On July 11, 1987, Congress passed legislation implementing the Executive Order 12564. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. Sec. 7301 (herein refer to as Section 503), was passed in an attempt to establish uniformity among Federal agency drug testing plans, reliable and accurate drug testing, employee access to drug testing records, confidentiality of drug test results, and centralized oversight of the Federal Government's drug testing program. In compliance with EO 12564, Section 503, and Section 502 of the supplemental Appropriations Act of 1987, the EPA created the EPA's Drug-free Workplace Plan (DFWP). That plan was incorporated into the 2001-CBA.

The Union proposes to continue the terms of the current 2001-CBA. The Union asserts that the relevant authorities and the EPA Drug-Free Workplace Plan continue to remain in effect, amendments[10] are incorporated by reference in to the CBA, and the Agency's attempt to expand the article to alcohol is not supported by any existing agency policy.

The Agency's proposed article would still incorporate the EO 12564 and the EPA Drug and Alcohol-Free Workplace Plan (although the Agency provided no evidence that an Alcohol-Free Workplace Plan exists, nor did they provide it to the Union when the Union requested to see such a policy). The biggest change is the Agency intends to apply the rules and procedures adopted to address a Drug-free workplace to an Alcohol-free workplace. The Agency provided no authority for such changes. The Panel orders the Parties to maintain the current 2001—CBA terms for Article 32 – Drug-Free Workplace.

[10] Since the publication by Substance Abuse and Mental Health Services Administration (SAMSHA) of the Model Plan for a Comprehensive Drug Free Workplace Program in 1989, changes in language and implementation practice have been made by SAMSHA by direction of OPM and the Interagency Coordinating Group (ICG) Executive Committee, acting for the Office of National Drug Control Policy, in coordination with the Department of Justice.

Article 43 – Miscellaneous and General Provisions

This article includes access to Agency regulations and directives regarding conditions of employment impacting this bargaining unit, the personal use of Agency equipment, and the selection of office space. It is a very short article. The Parties are essentially in agreement on 6 out of 9 provisions remaining before the Panel. The Union's proposal is generally the 2001-CBA, with updates and modifications reflecting agreements reached by the Parties over the years. The Agency's proposal also incorporates updated agreements reached by the Parties. The Panel orders the Parties to adopt the following proposals:

- Agency Section 1
- Union Section 3-7

The Parties disagree over an employee's access to their hard copy Official Personnel File (OPF). Federal employees are entitled to receive a copy of their OPF. To facilitate these requests, OPM encourages employees to contact their HR Department for access to their OPF. The Union has proposed a procedure for employees to request a copy of their OPF. The Agency argues that the proposal is not agreeable because it assigns duties to specific management officials. However, the Agency did not offer a better procedure for an employee to request and receive a copy of their OPF. The Panel orders the Parties to adopt Union Section 8.

Finally, the Parties disagree over the definition of "days" in the CBA for the purpose of filings and due dates. "Days" is referenced numerous times throughout the CBA. The Union offers a proposal to clarify that "days" means "calendar days" throughout the CBA. It is hard to know the impact of that clarification in every possible reference throughout the CBA. Neither party offered impact information regarding this proposal. Without being able to appreciate the impact of ordering that language, the Panel declines to order the Union's language that attempts to define "days" throughout the entire CBA.

Article 44 – Use of Agency Facilities

This article addresses the Union's use of the agency facilities to conduct representational activities. The current 2001-CBA states that the Agency will provide the Union with dedicated office space, telephone, computer and FAX machine. However, in the last 10 years (duration of the current Union President's tenure), the Union has not sought access to those commitments; they haven't needed them. The Union has used

their own assigned office space for occasional representational meetings with employees, and the government computer and telephone for representational purposes under the Statute. The office support that has been provided to the Union is a small unused room that the Union has used for storage and a lockable file cabinet. The Union's current proposal reflects these current conditions in the facility – use of their assigned office to conduct representation activity (when on approved official time) and a loan of a lockable file cabinet.

The Agency's proposal reflects changes made by the Agency in their attempt to comply with the EO 13837, specifically Section 4 (a)(iii)[11], which prohibits the use of federal property unless others are also allowed access. The Agency argues that aside from the EO-prohibition from providing the Union support, they believe there is no reason why a union that collects dues every pay period cannot afford to supply its own office supplies.

The Union provided an Agency policy that permits the use of Agency resources by voluntary, nonlabor groups, associations, and organizations of Agency employees. Under that policy, non-labor groups are provided access to Agency facilities, services and equipment as long as such use does not interfere with official Agency business and subject to the availability of funds[12]. The Agency also has a policy, Limited Personal Use of Government Office Equipment Policy, approved August 2019.

The Agency's proposal provides for the use by the Union of government equipment that is available and authorized by the Agency for personal use and use by other groups. The Agency's proposal is reasonable and equitable. The Panel orders the Parties to adopt the Agency's proposal regarding Article 44- Use of Agency Facilities.

[11] EO 13837, Section 4 (a)(iii) - No employee, when acting on behalf of a Federal labor organization, may be permitted the free or discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems.

[12] Reasonable use of meeting rooms on a space-available basis; reasonable use of copiers, fax, computers, telephone service and equipment, and bulletin boards; reasonable use of Agency internal mail services and electronic mail to group members to communicate group announcements, newsletters, and educational materials; the use of teleconferencing, mass mailing, and mass copying, if an office determines that the expenditure is proper and agrees to pay for the cost of the service; a Web site on the Agency's intranet if an office determines that the expenditure is proper and agrees to pay any costs of the site's development and continued maintenance; and any use permitted to individual EPA employees under the Agency's policy on personal use of Agency equipment.

Article 46 – Force and Effect of Agreement, Duration of Agreement and Negotiations of Subsequent Agreements

As the title indicates, this article addresses not only the duration of the CBA, but also the effect of agreements under this CBA and procedures for negotiating a successor CBA. The Union essentially proposes to continue to terms of the 2001-CBA. The Agency's proposal is expanded.

There are a number of provisions in dispute. The duration proposed by the Union is 3 years. The Agency proposes a 7-year duration. The Agency argues that the 7-year duration will save the expense of negotiating a new contract every 3 years. The Agency submitted evidence to show that the cost of bargaining the current contract is approximately $113,790. The Agency argues that the Union should not object to the longer duration because they did not even open the instant CBA for 18 years. As neither party seems to be actively seeking to reopen the CBA very frequently, the Panel orders the Parties to adopt a duration of 7 years.

The Parties were also in disagreement over the notice period to reopen negotiations for a successor CBA. The Agency, in its rebuttal[13], amended its timelines to address the Union's concern. The Parties do continue to remain in dispute over what happens if, during negotiations of a successor CBA, the Parties are unable to reach agreement within 1 year. The Agency proposes that failure to reach agreement (including subjecting the negotiations to mediation and impasse proceedings before the Panel) within 1 year, will result in a termination of the current CBA. It has taken the Parties two years to reach this point in the negotiations process, without any accusation of stalling or bad faith bargaining. It may be appropriate for negotiations to not be completed within 1 year. The Parties should not foreshadow that punishment will be warranted or necessary in seven (plus) years to effectively close out bargaining.

The Parties also disagreed over the Agency proposals over ground rules for negotiations over a successor CBA. The Union objects to establishing bargaining ground rules for the negotiations of the successor CBA without knowing what the conditions will be. In its rebuttal, the Agency clarified that they are only offering ground rules to govern the negotiations to get to new ground rules that will later be used for successor CBA negotiations. The Agency did not intend those ground rules to apply to the actual bargaining of the successor CBA.

[13]Agency Rebuttal, page 13: "The Agency hereby modifies its LBO Section 3 open period from 90-60 days to 105-60 days to track the Union's LBO and the 5 USC 7111(f) raiding period, and so that the Panel can order adoption of the entire Agency Article.

The Panel orders the Parties to adopt the following for Article 46 - Force and Effect of Agreement, Duration of Agreement and Negotiations of Subsequent CBA:

Section 1. Duration of Agreement - This Agreement shall remain in effect for seven (7) years from the effective date of this Agreement.

Section 2. Force and Effect of Agreements and MOUs/MOAs under this Agreement

A. Agreement. For the full seven (7) year term of the Agreement and, while the Agreement otherwise continues in effect under Section 3 of this Article, the provisions of this Agreement shall remain in full force and effect and unchanged unless both Parties consent to a change in the Agreement.

B. Supersedes Previous Agreements. This Agreement supersedes all negotiated agreements that were in effect prior to the effective date of this Agreement, unless the Parties have agreed to incorporate them into this Agreement by reference.

C. Duration of MOUs/MOAs. MOUs/MOAs negotiated under the terms of this Agreement shall be considered to be part of this Agreement and shall have a duration concurrent with the Agreement, unless otherwise specified in the MOU/MOA.

Section 3. Notice to Renegotiate and Termination of this Agreement

This Agreement shall be automatically renewed from year to year unless one Party gives the other written notice of its intention to renegotiate this Agreement no less than sixty (60) or more than one hundred and five (105) calendar days prior to this Agreement's expiration date. If notice to renegotiate is given, the Agreement shall be extended until a new agreement becomes effective.

Section 4. Negotiation of Ground Rules for a Subsequent Agreement

In the event that one of the Parties decides to renegotiate this Agreement as provided for in Section 3 of this Article, the following procedures to negotiate ground rules will apply:

A. The Parties will make arrangements to meet within (30) calendar days after notice to renegotiate is given to commence ground rules negotiations.
B. Ground rules negotiations will be scheduled for a total of four weeks (Two - two weeks bargaining session with one week break in

between), beginning at 9:00 AM and concluding at 5:30 PM, with a one-half hour lunch break. If agreement on ground rules is not reached by the end of the four weeks of bargaining, within three (3) workdays of the conclusion of the last bargaining session, either Party may submit a request for mediation assistance.

C. Ground rules negotiations shall be conducted virtually unless the Parties both agree that face-to-face negotiations are necessary.
D. Ground rules negotiations shall be accomplished through the exchange of written proposals, telephone calls, and/or video conferencing technology.
E. Each Party shall be represented by up to three (3) persons, including the Chief Negotiator who will have authority to bind their Party.
F. If travel is necessary, each Party will be responsible for its own travel and per diem.
G. If both Parties consent to face-to-face negotiations, the Agency will make a room available for negotiations.

ORDER

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

Mark A. Carter
FSIP Chairman

June 26, 2020
Washington, D.C.

Attachments:
Agency Proposals
Union Proposals