

Negotiations - Chapter 13

Important Points

- Don't miss deadlines – preserve the Union's right to bargain. In our Master Agreement, the deadline to invoke the Union's right to negotiate is between 15 and 30 days after receiving written notification, depending on what deadline (if any) was included in the notice. If the deadline is missed then potentially Management can implement a proposed change without the Union having any say in the matter.
- Seek guidance – contact the Local 1998 leadership (Union President, Vice President, Chief Steward, Secretary-Treasurer, and Recording Secretary) for guidance when a situation arises that may call for bargaining (e.g., a change in working conditions).
- "Management Rights" – probably the majority of bargaining in the federal sector touches on Management Rights, which are listed in 5 U.S.C. 7106. Oftentimes you may hear a manager tell you, "that's a Management Right so we don't have to deal with you on this" or "that's not negotiable because it is a reserved Management Right" or something like that. Do not be confused by this talk. Yes, Management does have rights listed in the law. However, that very same provision of the law gives the Union the right to bargain for "procedures" for how Management will exercise those rights and also for "appropriate arrangements" to ameliorate the adverse impact on employees by the exercise of that right. (read below for more on this)
- Communicate – inform bargaining unit employees of what changes are being considered and solicit input from them. Any bargaining you do as a Union Steward is on behalf of the bargaining unit employees, so it is vital that you communicate with them.
- Union/Management Committees – virtually any type of issue that could be accomplished through mid-term bargaining (see below and see Article 12 of the contract) could also be done, more informally and in some cases more effectively, through the partnership process used in the Union/Management Committees (see Chapter 12 of this Steward Manual and also see Article 4 of the contract). However, if the UMC does not successfully resolve the issue, then mid-term bargaining may commence. In any event, while working through the UMC is the best approach in many instances, never fail to invoke the Union's right to bargain in a timely fashion.
- Relevant Government Agencies – there are three independent government agencies that play a key role in federal sector bargaining. They are independent in the sense that they are not

part of the Department of State, the Department of Labor, or any other part of the Executive Branch. The three agencies are: 1) the Federal Labor Relations Authority (FLRA), 2) the Federal Service Impasses Panel (FSIP), and 3) the Federal Mediation and Conciliation Service (FMCS).

- The **FLRA** makes decisions on the negotiability of proposals, rules on Unfair Labor Practice charges involving bad faith bargaining and other negotiations issues, and also hears appeals on arbitrator's awards (e.g., on a grievance alleging bad faith bargaining).
- The **FSIP** make decisions on which proposals should be adopted when the Union and Management cannot reach an agreement.
- The **FMCS** supplies mediators and training to resolve negotiations and help to arrive at agreements.

Be Prepared

Prior to any changes in working conditions or other situation where you may be considering negotiating with Management, it is important that you be prepared. For example, you need to know what the FLRA is, what "negotiable" means, what role Management Rights plays in bargaining, and many other concepts. Make sure to:

- Read Article 12 of the contract.
- Read this chapter.
- Check out the website.
- Consider attending training classes at the Winpisinger Center (see Chapter 2), including the "Federal Sector Collective Bargaining" course.
- Email or phone other Union Stewards to find out how they have handled situations like yours before.

Purpose of negotiations/bargaining

"Collective bargaining" is bargaining, or negotiations, between the Union and Management. The term is defined by law, at 5 U.S.C. 7103(a)(12):

"collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith

effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession

Unions engage in collective bargaining to advance the interests, protect the needs, and advocate on behalf of the bargaining unit employees that they represent.

Collective bargaining is a statutory requirement – 5 U.S.C. 7114(a)(4):

Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

Key concepts

Substantive vs. “I&I” bargaining

Generally speaking, bargaining occurs in two legal contexts – bargaining over the substance of a proposal or bargaining over the impact and implementation of a proposal:

- Substantive: this involves bargaining over whether or not the proposal will be implemented. This is “meat and potatoes” bargaining.
- “I&I” bargaining, or “impact and implementation” bargaining, involves negotiations over “procedures” for how a proposal relating to a Management Right will be executed and negotiations for “appropriate arrangements” for employees who would be adversely affected by the exercise of a Management Right.

“Term” bargaining/contract negotiations

Term bargaining is bargaining for a contract on behalf of all employees in the bargaining unit – all employees within Passport Services, not just one office. Term bargaining involves comprehensive negotiations on a wide range of subjects. NFFE Local 1998 and Passport Services bargained

from September, 2005 until July, 2009 for the contract that went in to effect on July 20, 2009. This involved 11 weeks of face-to-face bargaining in Washington, DC and San Francisco, plus two days in August, 2009 bargaining revisions in the wake of the agency-head review. The previous contract, effective on July 3, 2001, and involved 7 weeks of face-to-face bargaining. Bargaining for a new contract takes place infrequently – with years in between editions of the contract. This is a major undertaking. See below for more information.

Mid-term bargaining

Mid-term bargaining occurs during the term of the contract, and can happen at the local office level or at the national level. This usually involves one issue at a time, but can involve a number of issues. Oftentimes mid-term bargaining is connected to a proposal from Management to change working conditions, but the Union can also initiate mid-term bargaining on subjects not “covered by” the contract.

This is the type of bargaining that most Union Stewards will be performing during their tenure.

Duty to bargain in good faith

Bargaining in good faith is a requirement of the law – 5 U.S.C. 7114(b):

- (b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation--
 - (1) to approach the negotiations with a **sincere resolve** to reach a collective bargaining agreement;
 - (2) to be **represented** at the negotiations by **duly authorized representatives** prepared to discuss and negotiate on any condition of employment;
 - (3) to **meet at reasonable times** and convenient places as frequently as may be necessary, and to **avoid unnecessary delays**;
 - (4) in the case of an agency, **to furnish** to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, **data--**
 - (A) which is normally maintained by the agency in the regular course of business;
 - (B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective

bargaining; and
(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(emphasis added)

The words in bold emphasize the important components of bargaining in good faith – bargaining sincerely, being represented by duly authorized representatives, meeting at reasonable times, avoiding delays, and furnishing necessary data. Both parties must make a sincere effort to reach agreement. The negotiators at the table must have full authority to reach an agreement – they cannot be puppets of others, not present, who are pulling the strings. No delay games should occur. The information necessary for the Union to have in order to conduct a “full and proper discussion” of the issues must be provided by Management.

Failing to negotiate in good faith is an Unfair Labor Practice (see 5 U.S.C. 7116) and a side alleging that has occurred may file a ULP with the FLRA.

Management Rights

“Management Rights” are defined by law at 5 U.S.C. 7106:

§ 7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency--

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency;
and

(2) in accordance with applicable laws--

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the

personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from--

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating--

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

On many occasions Union Stewards have been told by managers that they cannot negotiate over a topic because it is covered by “Management Rights” or that Management need not notify or bargain with the Union on a subject because of “Management Rights”.

This is a misunderstanding of Management Rights.

Some managers have pointed out, for example, that 5 U.S.C. 7106(a) gives Management the right to order mandatory overtime, establish critical elements and performance standards, and contract out work. That is true.

However, all of the Management Rights listed in 7106(a) are “subject to” – meaning “subordinate to” – the 7106(b)(2) procedures and 7106(b)(3) arrangements negotiated with the Union. This only makes sense, as otherwise if 7106(a) allowed Management to exercise its authority at will, and procedures and arrangements negotiated under 7106(b) were optional and unenforceable, then those procedures and arrangements would be meaningless, the grievance procedure would be irrelevant, and any arbitrator’s authority would be nonexistent. As the Federal Labor Relations Authority explained in its decision in *51 FLRA No. 36*:

Pursuant to this provision, an agency's authority to exercise the rights enumerated in section 7106(a) is expressly made "subject to" section 7106(b). Thus, **the section setting forth the authority of agency management begins with the statement that such authority is *limited by subsection (b)***. Consistent with the statement of this limitation in section 7106(a), section 7106(b) begins with the statement that "[n]othing in [section 7106] shall preclude an agency" from negotiating over the matters set forth in the three subsections that follow. This language compels the conclusion that, where a proposal concerns a matter encompassed within section 7106(b), it is negotiable, consistent with the terms of subsections (b)(1), (2), or (3), even though it may also affect the exercise of authority by a management official to take actions enumerated in section 7106(a)....

3. Judicial Interpretations

This construction of section 7106 is consistent not only with the express terms of the Statute and our reading of the legislative history, but also with the decision of the United States Court of Appeals for the District of Columbia Circuit in Association of Civilian Technicians, Montana Air Chapter No. 29 v. FLRA, 22 F.3d 1150, 1155 (D.C. Cir. 1994) (Montana ACT)....

.... Indeed, **the D.C. Circuit had established**, prior to Montana ACT, **that it viewed section 7106(a) management rights as *subordinate to the provisions of section 7106(b)***. In analyzing section 7106(b)(2) and (b)(3), the court found it "clear that a proposal advancing either a procedure or an appropriate arrangement for adversely affected employees falls within the scope of an agency's duty to bargain, notwithstanding that implementation of the proposal would affect the enumerated managerial rights [in section 7106(a)]." Id. (citing American Federation of Government Employees, Local 1923 v. FLRA, 819 F.2d 306, 308 (D.C. Cir. 1987) (emphasis added)). Similarly, in OEA, the court, holding that employees were "adversely affected" by management's exercise of a reserved management right under section 7106(b)(3) of the Statute, stated that "section 7106(b) authorizes bargaining over proposals in either of three categories notwithstanding some intrusion on [s]ection 7106(a) prerogatives." 876 F.2d at 962 (emphasis added). See also Overseas Education Association v. FLRA, 961 F.2d 36, 39 (2d Cir. 1992)....

Based on the foregoing, we conclude, in agreement with the D.C. Circuit, that "§ 7106(b) is indisputably an exception to § 7106(a)." Id.

(underlined emphasis in original, bold & italics emphasis added)

While the case referenced here focused on 7106(b)(1) issues, the FLRA's explanation makes clear that all of 7106(a) is subordinate to 7106(b) – including 7106(b)(1), 7106(b)(2), and 7106(b)(3).

In other words, Management's authority to take actions under 7106(a) is limited by the procedures and arrangements, pursuant to 7106(b), that have or will be reached through collective bargaining.

Basically what this means is that:

- 1) If Management is going to exercise its rights they must be in accordance with past agreements, especially the contract. Acting in violation of the contract is subject to a grievance or other appropriate avenue of appeal.
- 2) If Management is going to exercise its rights on a subject not covered by the contract, or for which the contract has an "opener", then Management must notify and negotiate as appropriate with the Union, generally (unless there is an emergency) prior to initiating the action or implementing the plan. Failing to notify or negotiate with the Union is subject to a grievance or ULP charge or other appropriate avenue of appeal.

Negotiability: "Negotiable" vs. "Non-Negotiable"

Negotiability is a concept that describes whether a proposal is legal subject to or eligible for bargaining. If a Union proposal is **negotiable**, then Management has a legal obligation to bargain over it. In the federal labor-management context, a synonym for "negotiable" would be "legal". Even more accurate: "obliged to bargain" means the same as "negotiable". If a Union proposal is non-negotiable then that means Management has no obligation to bargain over it.

If there is a dispute as to whether a proposal is negotiable or not, a negotiability appeal may be filed with the FLRA (read below for more information). Keep in mind that negotiability appeals are only filed at the national level (by the Union President, Vice President, Secretary-Treasurer, Recording Secretary, or Chief Steward).

The term "**non-negotiable**" really covers two issues.

First of all, a proposal by the Union can be non-negotiable because it is not legal or valid – it conflicts with a law or a governing regulation, or interferes too much with the exercise of a Management Right (how much

is too much? – that is discussed below). That means that even if Management agrees to it accidentally or in error, that provision in a contract or a local agreement is not legally valid or enforceable. If Management later violates that provision, a grievance/arbitration over that violation would not be upheld by the FLRA.

Second of all, some issues – informally called “(b)(1)” issues because they come from 5 U.S.C. 7106(b)(1) – are negotiable, but only at the election of Management. That means that Management can choose whether or not to bargain over them. These topics include the numbers of employees, the tour of duty, or the means of performing work. If Management chooses to negotiate over them and “(b)(1)” proposals are incorporated into the contract or a local agreement, they are binding on Management and they are enforceable through the grievance procedure. During bargaining, a manager may say that a Union’s “(b)(1)” proposal is “non-negotiable”, but in that context the phrase simply means that Management chooses not to negotiate over it and therefore Management has no obligation to do so.

Examples

Here is an example that was alluded to in the “Management Rights” section above:

Mandatory Overtime

Management does have the right to assign mandatory overtime, but here is a negotiable proposal (meaning that Management is obligated to bargain over them and, if adopted, become legally enforceable) that the Authority stated was negotiable:

Upon request, the employer shall relieve an employee from an overtime assignment if there is another qualified employee available for assignment and willing to work. *16 FLRA No. 132*

Also, the Authority ruled this proposal was negotiable:

An employee shall have the right to refuse an overtime assignment provide he has a legitimate reason and a qualified employee is available to take his place. *25 FLRA No. 9*

In our contract, we have this provision:

Prior to imposing mandatory overtime, the Employer will first seek eligible volunteers to perform needed overtime work. Management will exhaust voluntary overtime options prior to requiring mandatory

overtime. The Employer will make every effort to offer scheduling options for mandatory overtime that minimize disruption of bargaining unit employees' personal lives. In the event a bargaining unit employee does not desire to work mandatory overtime, the Employer shall make an effort to accommodate the bargaining unit employee's request to be excused from mandatory overtime work, provided that another qualified employee, who normally performs the work, volunteers for and is available for the overtime. Overtime will not be required of a bargaining unit employee if he/she is not able to work for medical reasons, or if he/she has a justifiable reason. *(from Article 28, Section 3)*

So, while Management can order mandatory overtime, the Union can negotiate for proposals for how that will be implemented – even proposals that would excuse an employee from mandatory overtime in certain circumstances.

Impasse

An impasse occurs after both sides have met and bargained over a proposal on a number of occasions, but simply cannot reach an agreement. This applies in cases where there is no negotiability question.

When there is an impasse, the resolution of the issue may be referred to the Federal Services Impasse Panel, which is an independent body that will issue a ruling within the parameters of what is being proposed. The FSIP will either adopt Management's proposal, the Union's proposal, or strike a compromise in between the two. Keep in mind that filings with the Impasse Panel are only handled at the national level (by the Union President, Vice President, Secretary-Treasurer, Recording Secretary, or Chief Steward).

The Mid-Term Bargaining Process

Mid-term bargaining is any bargaining that goes on during the life of a contract – it does not include negotiating over a successor contract. Mid-term bargaining takes place both at the local office level and at the national level.

Union-initiated or Management-initiated proposal(s)

The Union may make proposals during the term of a contract, for which Management is obligated to bargain over, so long as the proposals are not “covered by” the contract. The Union's right to make mid-term bargaining

proposals for matters not covered by the contract was established by a Supreme Court decision on a case initiated and argued by the National Federation of Federal employees, our very own Union: *NFFE v. Interior*, 526 U.S. 86 (1999).

“Covered by” means that the proposal addresses a situation that is already dealt with in the contract. Management does not have an obligation to bargain over proposals that are covered by the contract; however, Management and the Union at the national level may mutually agree to open up the contract in order to amend it. Similarly, if the parties already reached agreement on a subject and included it in the contract, then Management may not unilaterally (without the Union’s consent) open the contract for renegotiation.

If Management is taking an action regarding a matter for which a procedure or arrangement was already bargained for and adopted in the contract, and Management is complying with the provisions of the contract, then there is no bargaining obligation. If the Union attempts to bargain over this matter, Management can assert that it is already “covered by” the contract. However, if the contract provisions are not being complied with due to the manner Management is taking the action then that type of problem or disagreement would be handled with a grievance (or, in a few instances, by a ULP charge).

There are some provisions of the contract for which there is an “automatic opener” (also called a “reopener”), meaning that the subject is not specifically “covered by” the contract – on the contrary, an “opener” means that the subject is explicitly established by the parties to be subject to mid-term bargaining. A number of topics are listed in Article 12, Sections 16 and 17. Here are some other examples:

Article 19, Section 7c

The criteria for anti-fraud awards is a subject that may be addressed as appropriate under the provisions of Articles 4 and/or 12.

Article 25, Section 1

STANDARD WORKWEEK: The standard workweek shall consist of forty (40) hours spread over a maximum of five (5) consecutive eight (8) hour days. The standard workweek will be the period for which a bargaining unit employee is paid his/her straight-time pay rate. The Employer will give the Union notification of any change in the hours of work, shifts or tours of duty affecting bargaining unit employees in accordance with the procedure set forth in Article 12

(Negotiations). The Union shall be given the opportunity to request negotiations as appropriate.

Article 26, Section 1c

Alternate Work Schedule Plans shall continue within Passport Services. The Employer may not terminate any Alternate Work Schedule without providing the Union notice and the opportunity to negotiate, in accordance with Article 12. Alternate Work Schedules may only be terminated in accordance with applicable regulations and laws, including 5 U.S.C. 6131(c). Alternate Work Schedule Plans may vary based on the requirements of each Passport Agency or other appropriate office.

Article 27, Section 1

NOTIFICATION AND NEGOTIATION: If the Employer proposes to institute a second or night shift in addition to the standard work week addressed in Article 25, the Employer will notify the Union in accordance with Article 12 (Negotiations). The proposal shall specify the hours of work and schedules (e.g., regular 8 hour, 4/10 compressed work schedule, etc.) that the Employer wishes to institute. The Union shall be given the opportunity to request negotiations as appropriate.

Article 35, Section 8

NOTIFICATION AND NEGOTIATIONS: When the Employer determines that work will be contracted out that is being performed by bargaining unit employees, the Employer will notify the Union. The Union may request negotiations as appropriate.

For all of these provisions – the criteria for anti-fraud awards, changing schedules, contracting out work – if Management is seeking to make a change then the notification and negotiations requirements of Article 12 apply. These topics are not “covered by” the contract, and therefore Management has an obligation to negotiate.

Contrast these provisions with Article 24 of the contract, for example, which covers disciplinary action. The agreed-to language for disciplinary actions is already included and “covered by” Article 24. If Management seeks to change Article 24, it must either have the consent of the Union for an amendment or must wait until the renegotiation of the contract. If Management violates Article 24 or makes a unilateral change, that is subject to a grievance or a ULP charge. If the Union seeks to make changes to Article 24 during the term of the contract, Management can

lawfully refuse to bargain over the Union's proposals, using the "covered by" argument, because there is no "opener" in Article 24.

Because most mid-term bargaining has in the past involved proposals to change working conditions that were initiated by Management, the rest of this section is written within that context. However, do not lose sight of the Union's right to make mid-term bargaining proposals on subjects not covered by the contract.

Notice of a proposed change in working conditions

Management has an obligation to notify the Union in advance of changes in working conditions and to negotiate, as appropriate, over the changes with the Union. This is recognized by the FLRA and a body of legal rulings and precedents, as well as in the contract. As stated in Article 12, of the contract:

7. PROHIBITION ON UNILATERAL CHANGES: The Employer agrees that it will not unilaterally implement changes in personnel policies or practices or other general conditions of employment, including those originating from terms of dispute settlement agreements, unless Management is taking an action due to an emergency in accordance with 5 U.S.C. 7106(a)(2)(D) or the date of implementation is required by law. In these situations, post-implementation issue resolution or negotiations may be appropriate.

8. BARGAINING SUBJECTS: Subjects appropriate for negotiations are personnel policies and practices and other matters relating to or affecting working conditions of bargaining unit employees. The Parties may propose a change in conditions of employment not in conflict with this Master Agreement, provided it has not previously been proposed for inclusion in this Master Agreement.

9. MANAGEMENT'S BARGAINING REQUIREMENTS

a. Advance Notice: The Employer agrees to give reasonable advance written notice to the Union and the opportunity to negotiate any new or change in personnel policy or practice affecting working conditions of bargaining unit employees, which is proposed during the life of the Master Agreement. Notification may include a final date for the Union to request negotiations with respect to the proposed change.

b. Deadline For Union To Request Negotiations: At a minimum, the deadline will be at least fifteen (15) calendar days from receipt of

the notification of the proposed change. If the notification does not specify a deadline, then the deadline for the Union to invoke its right to bargain shall automatically be thirty (30) calendar days from the date of receipt of the notification. Nothing herein shall preclude the Parties, by mutual consent, from extending or reducing any time limits imposed under this Section.

The Department of State Labor-Management Relations office has recognized this obligation as well. For example, here is a quote from an October 3, 1997 Department of State Notice titled "Obligation to Deal with Unions":

Federal Labor Management Relations policy requires that management representatives of the Department consult and bargain as appropriate with exclusively organized labor organization (unions) of the Department with respect to conditions of employment of employees. This includes personnel policies, practices, and matters affecting working conditions. Regulations and practices pertaining to allowances, travel, per diem, tour of duty, leave, etc., are considered personnel policies or practices. Additionally, the unions are entitled to be informed in advance of notifications to employees on actions that management intends to take, even when such actions are reserved management rights that are not subject to negotiation. The advanced notification is required even when the action is mandated by higher authority, such as a law. This requirement of advance notice exists because the unions are entitled, upon request, to negotiate appropriate arrangements for employees adversely affected by management's exercise of reserved rights and the implementation of procedures of management actions. Examples include changes or new procedures in internal security, assignment of work, or promotion procedures.

Deadlines

As stated in Article 12, Section 9b of the contract, **the deadline for the Union to invoke its right to bargain is a minimum of 15 days after receiving the notice from Management.** If the notice contains no deadline, then the deadline is automatically 30 days. The notice may contain a specific deadline, but that deadline cannot be less than 15 days.

Failing to meet the deadline potentially waives the Union's right to invoke bargaining. This means that Management may potentially be able to implement the change without the Union being able to advocate for anything on behalf of the employees.

Invoking the Union's right to bargain

In order to negotiate over a change in working conditions, the Union must invoke its right to bargain. As stated in Article 12, Section 9 of the contract:

c. Invoking The Union's Right To Bargain: If the Union desires to negotiate with respect to a proposed change, the Union shall notify the Management official from whom the notification was received. Such notification will be in writing, prior to the deadline.

d. Information: If the Union believes it needs more or better information in order to respond to the proposal, it must request that information within ten (10) days of receipt of the proposal. The request will be made in writing and directed to the named Employer representative. The Employer will provide the information or the denial in writing within ten (10) days of the request. The time limit for the Union to invoke its right to bargain will be extended ten days from receipt of the Employer's response.

e. Union Proposals: The Union's proposals shall be submitted within twenty (20) days after the Union invokes bargaining. The Union's submission should be as specific as possible.

f. Failure To Respond Within Deadlines: If the Union does not respond by the specified deadline the Employer's original proposal may be implemented, so long as it does not conflict with this Master Agreement.

SCENARIO: Management approaches you as a Union Steward and notifies you of a change in working conditions. For example, this could be a change in moving a number of employees from their current desks, a change in work schedules, or a change in the duty officer rotation.

WHAT SHOULD THE UNION STEWARD DO?

The Union Steward should:

- Remind the Management official that written notification is required, per Article 12, Section 9a of the contract.
- Tell the Management official that a response will be forthcoming.
- Request official time (see Article 7 of the contract) to take the steps listed below.
- Invoke the Union's right to bargain: request "negotiations as

appropriate” to Management, in accordance with Article 12, Section 9c of the contract.

- Notify the Union leadership of Management’s notice of the change.
- Obtain guidance from the Union leadership, NFFE Business Representatives, and/or this Steward Manual.
- Notify the bargaining unit employees of Management’s proposal.
- Obtain input from the employees in response to Management’s proposal.
- Work with the Union leadership to formulate a response.
- Remember that in any negotiations with Management, the Union must be represented by at least two Union officers (Article 12, Section 12 of the contract).
- Represent the interests and the needs of all of the bargaining unit employees.
- Bargain with Management over the proposed change – either in the Union-Management Council (see Chapter 12) or via traditional negotiations (see elsewhere in this chapter).
- Take appropriate actions to contest any Management violations of appropriate authorities in regard to negotiating over changes in working conditions, in consultation with the Union leadership (grievances – see Chapter 9, negotiability appeals – see later in this chapter, Unfair Labor Practice charges – see chapter 10).

The Union Steward should NOT:

- Agree to the change without consulting with the bargaining unit employees first.
- Agree to the change without obtaining guidance when necessary.
- Miss deadlines (see Article 12, Section 9b of the contract).
- Fail to invoke the Union’s right to bargain, as appropriate, over the change.

For more information on Union-Management Council meetings, see Chapter 12 of this manual.

Official Time

You are entitled to official time (paid work time) to prepare for negotiations and to actually engage in the negotiations. Article 12 of the contract states, in relevant part:

a. Official Time: Union officials will be given a reasonable amount of official time to prepare for negotiations and will be on official time when negotiating during regular duty hours. Premium pay will not be paid to members of the Union negotiating team while in

negotiations.

b. Travel And Per Diem: The Employer will provide, as appropriate, travel and per diem to Union negotiators to attend bargaining sessions. Union negotiators will either travel on designated work days, or if travel must be accomplished on a non-work day (e.g., weekend or holiday), then the negotiators will be granted compensatory time off.

Local level negotiation procedures are as follows:

b. To the extent feasible, where the designated representatives of the Parties are not in the same commuting area, the Parties agree to use email and telephone to conduct negotiations under this Master Agreement in order to reduce costs.

c. For the Employer, negotiations at the local office level will be conducted by the most senior Management officials or their designees.

d. For the Union, negotiations at the local office level will be conducted by the Union officials in that office (e.g., the Senior Steward and the Union Steward[s]) or their designees.

e. The officials or their designees noted in c & d above shall have the authority to negotiate and reach agreement.

Getting help

As a Union Steward, you are not expected to know everything, but you are expected to find the answers and seek out assistance. When Management notifies you of a proposed change in working conditions (or when no notice was given, but a change is being made), notify the Local 1998 Union leadership (Union President, Vice President, Chief Steward, Secretary-Treasurer, and Recording Secretary) and ask for assistance. Forward the notification of information to these Union reps. Provide as much detail as possible (refer to the questions posed in Chapter 8). You may also contact a NFFE Business Representative (see Chapter 1). Remember, the Union's strength comes from its solidarity and its members - you are not alone, so use the resources available to you.

Information request

Oftentimes it is necessary to obtain information from Management in order to determine whether or not to invoke bargaining, the extent of the proposed change, and how employees could be impacted by it. 5 U.S.C.

7114(b)(4) gives labor organizations the right to request information from Management. That section of the law imposes a requirement on Management to furnish the information, within the following parameters:

- (4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--
 - (A) which is normally maintained by the agency in the regular course of business;
 - (B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
 - (C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining

Ground rules

Ground rules can be part of the negotiations process. All parties to negotiations are bound by the law and the contract, but sometimes it is helpful to negotiate separate ground rules for the particular matter being negotiated. Subjects that ground rules address include the dates of negotiations, the numbers of negotiators, the number of caucuses that can be called, the amount of additional official time that will be needed by the negotiators, etc.

Formulating proposals

You will spend official time formulating proposals, gather input from the bargaining unit employees, communicating with the Local 1998 leadership, researching FLRA caselaw, and brainstorming. It is not enough to say, "we want to negotiate". The Union Steward must offer specific, concrete, written proposals.

Soliciting input from BUE

The changes being proposed affect the bargaining unit employees that you represent and therefore it is vital that you communicate to them throughout the bargaining process - when you receive notification, when you are invoking the right to negotiate, and when you are formulating proposals. What do the employees want? What do the employees need? The best way to find that out is to ask the employees. Sending an email to the bargaining unit employee email distribution list (see Chapter 3) is a good way of doing this. You may also want to consider bringing up the topic during monthly Union member meetings or calling a special meeting on the subject. In addition, you may consider emailing or

distributing a survey.

Communicating with Local 1998 leadership

When you receive the notification of the proposed change, or when you first hear of a change even if you didn't receive notification as required, forward that information immediately to the NFFE Local 1998 Union leadership (Union President, Vice President, Chief Steward, Secretary-Treasurer, and Recording Secretary). As there are deadlines involved, it is important to communicate this information right away.

Stay in contact with the Union leadership through the process. These Union reps can assist you in formulating proposals, strategy, obtaining guidance from NFFE, and in finding out how Union reps in our other offices have dealt with similar circumstances.

Researching proposals

As a Passport Services employee, you receive training in the workplace on how to adjudicate passport applications, answer the phones, type letters, book print passports, etc. We have all kinds of instructions on how to do those tasks.

How do we research proposals? You can use the FLRA website, the OPM website, and books such as “A Guide to Federal Labor Relations Authority Law and Practice”, by Peter Broida (sometimes called “the Broida book”). The Local 1998 Union leadership has a copy of the Broida book, as do the NFFE Business Reps. Here are some websites that have some information on proposals:

- <http://www.flra.gov/>
- <https://www.opm.gov/lmr/flra/index.asp>
- <https://www.opm.gov/lmr/index.asp>

It is not absolutely necessary to do this kind of research, as there are many proposals that can be made in a given situation that would not be found in these resources.

If the proposed change from Management is considered a bad idea or harmful to the employees, then a standby proposal is simply: **“Maintain the status quo”**

Bargaining

Bargaining is the art of persuading of Management to adopt the Union's proposals. Different people are open to different lines of argument,

evidence, and approaches. How you handle bargaining in your office will depend in large part on who is on your bargaining team and who is on Management's bargaining team. Here are a few pointers on how to engage in bargaining:

- Equal numbers: Have the same number of Union negotiators as Management negotiators
- Never go alone: Article 12, Section 12 requires that the Union have at least 2 employees as negotiators. This is to protect both you and the bargaining unit employees that you represent. If you are the sole Union rep in the office, then either have another Union member or bargaining unit employee serve as a negotiator, or have one of the NFFE Local 1998 Union leadership members serve with you (via videoconference, if necessary).
- Wear your "Union hat": Remember that bargaining with Management is not the same context as the employee/supervisor relationship – within the context of labor-management relations, including bargaining, you are acting as equals. You are wearing your "Union hat", not your "employee hat" while engaging in bargaining.
- Solidarity: Speak with one voice. Have a united front and don't disagree with each other publicly during bargaining with Management.
- Game plan: It is helpful to have a game plan agreed to among the Union negotiators ahead of time. Map out your goals, strategies, and what is your "bottom line".
- Share the load: If only one Union rep is doing all of the talking, it can be difficult on that person and make it harder to persuade Management. Everyone should speak up.
- Time out: It is okay (and even advisable) to break, or "caucus", apart from Management to discuss an issue or resolve an internal difference.
- Nothing personal: The goal is to persuade Management to adopt the Union's point of view, so personal attacks are never helpful.
- Focus: Emphasize the advantages of the Union's proposal.
- Morale: If a proposed change by Management would harm morale, then that in itself is a valid argument against it.
- Listen: Pay attention to Management's concerns and attempt to address them. Be willing to listen and keep an open mind.
- A third way: Be open to compromise and finding collaborative solutions to a problem. Sometimes the problem or situation can be addressed in a way that neither the Union nor Management originally proposed.
- Beware of "group think": In your internal Union deliberations, watch out for any tendency to stifle debate. It is very valuable to have different viewpoints and even disagreements behind closed doors,

and to speak up about them.

There are various ways in which bargaining can be conducted:

- Traditional (positional)
- Interest-based
- Mediated

Traditional bargaining involves a formal exchange of proposals and efforts to persuade the other side to adopt your position. Interest-based bargaining involves jointly creating a list of Union and Management interests, goals, values, or concerns about a particular topic, and then jointly developing contractual language to address them. Mediated bargaining involves using a mediator to guide the process, including shuttling back-and-forth between the parties who may be separated into two rooms.

Agreement

When bargaining is complete and you have reached an agreement, make sure to put it in writing. The Union and Management negotiators should normally sign the agreement. The agreement should be forwarded to the Union leadership, as spelled out in Article 12, Section 16g:

Existing local agreements and changes in policies and procedures affecting the working conditions of bargaining unit employees will be put in writing and sent to the Union President and CA/PPT/FO by email within one week of the agreement. The Parties understand that it is the responsibility of the local negotiators to work with the national office as necessary and appropriate before signing any local agreement.

It is vitally important that the agreement be communicated to the bargaining unit employees as soon as possible, and in a readily accessible format. Consider posting it in a shared file or internal office website, on an office bulletin board or the Union bulletin board, and included in an employee orientation handbook. It should always be maintained in the Union cabinet.

Posted in shared file or internal website, posted on office or Union bulletin board, included in employee orientation handbook, and maintained in Union cabinet.

If your bargaining did not end in an agreement, see the "Contesting Management Actions" section below.

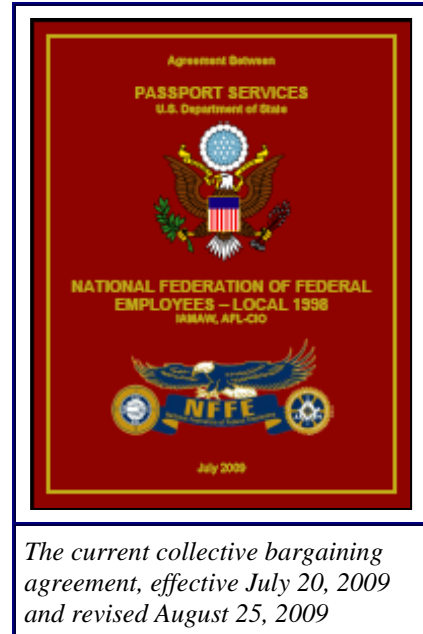
The Term Collective Bargaining/Contract Negotiations Process

Many aspects of bargaining for a new contract are the same as mid-term negotiations, so make sure to read the section above on that subject.

What follows here are the things that are different or must be emphasized about negotiating a new contract.

“Opener” – window to open contract for negotiations

Either side may open the contract to be re-negotiated – to bargain for a new contract replacing the old one – but only within the “opener” period. According to Article 38, Section 1b of the contract:



The current collective bargaining agreement, effective July 20, 2009 and revised August 25, 2009

The Agreement shall be renewed annually on each anniversary date thereafter, unless between one hundred five (105) and sixty (60) calendar days prior to any such date either party gives written notice to the other of its desire to amend or modify the Agreement. If such notice is given, this Agreement shall remain in full force and effect until the changes have been negotiated and approved.

The current contract went into effect on July 20, 2009 and is effective for 3 years – until July 20, 2012 (it automatically “rolls over” if neither party initiates an action to “open” the contract). The opener period for the next contract is between 105 and 60 calendar days prior to July 20, 2012.

Getting prepared

For contract negotiations, it is generally the Union President’s responsibility to get things started. While the “opener” is listed above, usually opening the contract is NOT the first step in beginning the process of bargaining for a new contract. It is best to have the dates in mind ahead of time, but to actually start laying the groundwork months in advance of actually triggering the opening of the contract.

One of the first things for the Union President to do is to determine who

will assist with the bargaining. NFFE and the IAMAW recommend the use of a bargaining committee and a bargaining team:

Bargaining Committee:

- Perhaps 8 – 10 members
- Would include the approximately 4 members of the bargaining team
- Members who are not on the team would serve as “back-ups” for the team, in the event of absences
- Job duties:
 - Identify priorities
 - Review problems faced and actions taken on behalf of our employees (grievances, ULP’s, etc.)
 - Develop survey of employees (in conjunction with NFFE and the IAMAW)
 - Conduct the survey of employees
 - Research other contracts, cases, laws, regulations, and the “Broida book” that we purchased
 - Draft proposals

Bargaining Team:

- Approximately 4 members
- Job is to present, argue for, and bargain with Management over our proposals (face-to-face, email, videoconference, etc.)

There are various ways in which the bargaining team members and bargaining committee members can be selected – but any method chosen should involve a vote of the Executive Board, as a decision of this significance should be presented to that body.

When the old July 3, 2001 contract was opened for bargaining in 2005, the NFFE Local 1998 Union President at that time issued a call for volunteers. The names of the volunteers were then listed in an email, and the Executive Board was asked to approve a motion giving the Union President the authority to pick from the list of volunteers. This was also done in 1999 in preparation for the contract old contract that went into effect on July 3, 2001. In both cases the Executive Board agreed.

As we are a bargaining unit made up of employees from many offices in many cities who perform a variety of functions and have a variety of backgrounds and experiences, it is important to select committee and team members based on and representative of the diversity of the bargaining unit. Most of the committees work is done by email and phone. For the team, which will meet with Management in person to conduct face-

to-face bargaining, it is important to have team members who will work cohesively and collaboratively.

NFFE assistance – Chief Negotiator

The Union President will contact NFFE National and request the assistance of a Chief Negotiator. This should normally be done well in advance of the "opener". The Chief Negotiator normally serves as the spokesperson for the local at the bargaining table. The Chief Negotiator is invaluable as he/she is an expert on labor-management relations and negotiability issues.

Survey

When re-negotiating the contract, a survey of all bargaining unit employees nationwide should be conducted. This is a great way to capture formalized input from employees. All surveys should have some space or section in them that allows for additional comments above and beyond the actual survey questions themselves.

Employees completing the survey should be given official time (work time) to do so. That has to be arranged or negotiated with HQ, and can be addressed in the ground rules. During preliminary negotiations for the current agreement, all bargaining unit employees nationwide were given 15 minutes of official time to complete the survey.

Important point: prior to initiating a survey, consult with the IAMAW and NFFE, as they have survey experts who will help draft the survey and analyze it.

Information request

An information request for term negotiations is the same as an information request for mid-term negotiations. The only difference is that while these are only sometimes submitted for mid-term bargaining, they are virtually always submitted for the term bargaining for a new nationwide contract.

Ground rules

See the section under mid-term bargaining above. For term bargaining, ground rules are a must. Ground rules will also address travel days and preparation time.

Formulating proposals

See the section under mid-term bargaining above. For term bargaining, a lot of time and efforts must be made on formulating proposals.

Bargaining

See the section under mid-term bargaining above. For term bargaining, the Chief Spokesperson takes the lead.

Agreement on CBA

Once you reach agreement on the contract, all parties should sign and date the agreement.

If you do not reach agreement, then see the section below on contesting Management actions.

30-Day Agency Head review

After the negotiators at the table have signed and dated the agreement (also called “executing the agreement”), then the Department of State has a 30-day review period to determine if anything agreed to violates the law. The Agency Head is the Secretary of State. In the past, the Secretary has designated that Undersecretary of State for Management to perform this function (and he/she has the Office of Legal Advisor scour the contract and research the legal issues). If the Agency does not approve nor disapprove the contract within the 30 days, then the contract goes into effect on the 31st day after it was executed.

The review period can only relate to legal sufficiency - Management cannot go back on a proposal that was agreed to if it was legal. If the Union disagrees with any Management decision on this, then the Union can file a negotiability appeal.

The current July 20, 2009 Master Agreement was the subject of controversy at its inception. The parties had executed the contract on June 19, 2009 – meaning that the 30-day review period ended on Sunday, July 19, 2009. The Union did not receive the approval or disapproval by that date, and therefore the contract went into effect on July 20, 2009. However, Management submitted a rejection of the contract to the Union on Monday, July 20, 2009. The Union filed a negotiability appeal as a “protective action” – which was later withdrawn after the parties ironed out their issues and agreed to revisions that went into effect on August 25, 2009. The parties agreed in the revised Master Agreement that the contract’s effective date was July 20, 2009.

Printing/distribution of contracts

The ground rules may address how quickly the contract will be printed and distributed after it is completed. After the July 3, 2001 contract went into effect, the contract itself was not printed or distributed until 3 or 4 months later. Watch out for these kind of delays and ensure that the contract is distributed to all employees in the unit.

Amending/supplementing the contract

The contract can be amended (having the current wording changed) or supplemented (an addition to the contract on a matter not address in the contract) at any time during the life of the contract – but only if both the Union and Management agree to do so (at the national level).

Article 38 of the contract states:

2. AMENDMENTS AND SUPPLEMENTS: This Agreement may be amended and/or supplemented as follows:

- a. At any time by mutual agreement of the Parties.
- b. Under the provisions of the Articles entitled "Negotiations" and "Union Rights and Representation."
- c. Within a reasonable time after the enactment of any new law, executive order, or government-wide regulation which affects the provisions of this Agreement. A proposal by either Party to negotiate such amendment(s) or supplement(s) shall cite the pertinent law, executive order or government-wide regulation and the Article(s) of this Agreement affected.
- d. Representatives of the Employer and the Union shall begin negotiations within 30 calendar days of a request to negotiate under the provisions above, unless the Parties agree to another specific date.

3. EFFECTIVE DATE OF AMENDMENTS AND SUPPLEMENTAL AGREEMENTS: Amendment and Supplementals to the Master Agreement are subject to approval of the Secretary of State or designee. If agreement or rejection under law has not been received by the Union within 30 days (as defined by FLRA regulations) from the date the Parties signed the document, the Amendment or Supplemental Agreement will be effective on the 31st day following that signing, in accordance with 5 U.S.C. 71. They shall remain effective concurrent with the Master Agreement.

4. LOCAL AGREEMENTS: The provisions of Section 3 do not apply to local agreements. For local agreements, the Parties shall follow the procedures for approval listed in Article 12, Section 16.

Contesting Management Actions

Negotiability Appeal → FLRA (the Authority)

If Management declares a Union proposal to be nonnegotiable, and the parties cannot develop alternate language, then the Union may file a negotiability appeal with the FLRA. It first goes to the “Case Control Office” and the three members of the Authority make the decision on the negotiability issues. There are specific deadlines and procedures to follow, and if they are missed then the Union may lose the appeal. After the Union files the appeal, Management gets an opportunity to explain its position. The Union then has the chance to write its own statement, and then finally Management has the last word and gets to respond to the Union's statement.

Impasse Panel Proceeding → FSIP

When the parties cannot reach agreement on a proposal, and mediation has been unsuccessful, then the parties may contact the FSIP to decide the matter. The Union and Management both submit their positions to the FSIP. The FSIP decides on the merits of the proposals - which proposal is better.

Unfair Labor Practice → FLRA

An Unfair Labor Practice charge can be filed with the FLRA within 6 months of an event or actions. ULP's that may be filed relating to bargaining include bad faith bargaining, implementing a change without negotiating, and failure to provide requested information. This applies both to mid-term bargaining and term negotiations.

Grievance/Arbitration

For mid-term bargaining, the issues raised in a ULP can also be contested via the grievance procedure. However, the Union may select only the ULP path or the grievance path, but not both. As the term negotiations involve bargaining for a new contract, it would not usually be appropriate to submit a grievance regarding bad faith bargaining or similar actions. For term negotiations, normally a ULP would always be filed.