

GOVERNMENT SHUTDOWN BARGAINING GUIDANCE

If the Agency has provided your Council or Local information that you represent employees who will be furloughed, or if you believe that you represent employees who will be furloughed, in the event Congress fails to pass an appropriations bill before your Agency's appropriations run out, you should attempt to bargain with the Agency to negate the impact a shutdown will have on employees as much as possible.

Although a last minute deal avoiding any potential funding gap is always possible, it is a good idea for a Local or Council to have an MOU or CBA provision covering this scenario since the possibility of appropriations lapse is a very real one in the short and medium terms. This guidance aims to help Councils and Locals with bargaining on these issues.

Mid-Term Bargaining:

- If you are in the middle of the term of your CBA (including a CBA that periodically rolls over), you have the right to initiate bargaining mid-term if the topic of funding gaps and related furloughs is not covered by your CBA. (If the topic is covered by a provision in your CBA, you should file a grievance if the Agency fails to comply with the provision.)

FLRA Rule: the duty to bargain in good faith that is imposed by the Statute requires an agency to bargain during the term of a collective bargaining agreement on negotiable *union-initiated* proposals concerning matters that are not contained in the collective bargaining agreement. DOI and NFFE Local 1309, 56 FLRA 45 (2000).

SUGGESTED TOPICS OF BARGAINING AND CONTRACT LANGUAGE

Retroactive Administrative Leave for Furloughed Employees:

You should attempt to negotiate a provision whereby furloughed employees will receive retroactive administrative leave once an appropriations bill is passed and enacted.

*Suggested Language: **The Agency shall grant employees who suffer loss of pay through furlough administrative leave equal to the lost time when an appropriation is enacted.****

*This language was found to be negotiable in AFGE v. Veterans Administration, 41 FLRA 73 (1991).

Pay for Excepted Employees:

You should seek language guaranteeing that employees who are required to work during a funding gap will be paid within a certain number of days once the new appropriation is enacted.

*Suggested Language: **Within seven (7) days of the enactment of the new appropriation, excepted employees shall be made whole for the time working during the funding gap.***

Notification Procedures:

You should attempt to negotiate procedures on how the Agency will notify employees regarding shutdowns due to funding gaps. This should include letting employees know in advance whether they are excepted employees

(employees who will continue to work during the shutdown) or non-excepted employees (employees who will be furloughed).

You will also want to negotiate procedures for how employees who are furloughed will be notified to return to work and to ensure that employees will not be furloughed for longer than necessary due to inadequate information.

Finally, there should be enough notice to returning employees to avoid having employees who have made arrangements or travel plans from losing pay or being placed in an AWOL status.

Determining Which Employees Are Furloughed:

In some situations, where a specific number of positions are identified as excepted but a greater number of employees hold the identified positions, the Union may want to negotiate volunteer provisions or other procedures for identifying who will be required to work during the furlough. The Union, however, may want to avoid this subject if the Agency is willing to agree to retroactive administrative leave.

Suggested Language: Where a limited number of available employees in a position will be deemed excepted, the Agency will first solicit volunteers. If more employees volunteer than necessary, the volunteers shall be selected by seniority. If enough employees do not volunteer, the Agency shall select employees by reverse seniority.

Lost differentials:

If the Agency is receptive to Administrative leave, the Union may also want to include additional language protecting against any lost differentials and premium pay that the employee would have normally earned if not for the Shutdown.

Suggested Language: The Agency will grant employees who suffer loss of pay through furlough, administrative leave equal to the lost time when an appropriation is enacted. Such leave shall include lost differentials and premium pay the employee would have otherwise earned.

Excepted Employees' Rights Under The CBA:

You should ensure that nothing in the MOU waives excepted employees' rights under the CBA for any matters such as requesting leave, or notice requirements for overtime, etc.

Suggested Language: Nothing in this MOU waives any rights excepted employees would otherwise have in the course of their employment under the CBA, law, rule or regulation (e.g. leave request procedures).

FEHB Payments:

You may attempt to address how payments to health premiums and other deductions will be handled.

Suggested language: Once an appropriation is enacted, all employer health premiums and other benefit premiums shall be promptly paid.