

United States of America
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

Department of Veteran Affairs

and

American Federation of Government Employees,
Local 2297

Case No. 18 FSIP 014

DECISION AND ORDER

The Department of Veteran Affairs (VA or Agency) filed a request for assistance with the Federal Services Impasses Panel (Panel) to consider a negotiation impasse over ground rules for local impact and implementation bargaining under Article 47 of the 2011 Master Collective Bargaining Agreement (MCBA) under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §7119, between it and the American Federation of Government Employees, Local 2297 (AFGE or Union).

Following an investigation of the Agency's request for assistance, the Panel determined that it would assert jurisdiction and the outstanding negotiation matters would be resolved by Written Submission, with rebuttals. The Parties were advised that the briefs and exhibits would go to all Panel members for consideration and final resolution (i.e., Panel *Decision and Order*). Both parties submitted timely submissions.

BACKGROUND

The VA Greater Los Angeles Healthcare System (VAGLAHS) is one of the largest health care systems within the Department of Veterans Affairs, offering services to Veterans residing in Southern California and Southern Nevada. There are 1.4 million Veterans in the VAGLAHS service area. VAGLAHS consists of two ambulatory care centers, a tertiary care facility and 8 community-based outpatient clinics. Ambulatory care or outpatient care is medical care provided to Veterans in the VA system on an outpatient basis, including diagnosis, observation, consultation, treatment, intervention, and rehabilitation services. AFGE, Local 2297 represents approximately 250

employees at one of the ambulatory care centers within the VAGLAHS, the Los Angeles VA Ambulatory Care Center (LAACC) in downtown Los Angeles.

The parties are governed by a national collective bargaining agreement that expired in 2014, but continues to roll over on an annual basis. Within the VA, the level of recognition for AFGE exists at the national level. Therefore, the Agency is obligated under the Federal Labor Statute to bargain changes that impact the AFGE bargaining unit at the national level, unless the parties have agreed otherwise. In their MCBA (Article 47, Section 4), the parties have agreed that the Agency is obligated to bargain locally those changes that impact at the local level. To facilitate orderly negotiations at the local level, the parties have authorized the local parties to bargain some provisions of local negotiation ground rules. The parties are at impasse over the local negotiation ground rules.

In April 2017, the Agency provided the Union President with proposals for ground rules for midterm bargaining changes. In May 2017, the Agency provided the Union a briefing. After significant negotiation over the Union's submission of proposals and scheduling to discuss the proposals, the Agency filed a request for assistance with the Federal Mediation and Conciliation Services. In September 2017, the Parties met to negotiate, with the assistance of the Mediator. The parties met a number of times in September and October. The parties were unable to resolve many outstanding issues. In November 2017, the Agency filed its request for Panel assistance in this case.

OUTSTANDING PROVISIONS

1. Preamble

Agency – Upon agreement of the ground rules dated and signed by the parties, these ground rules will remain in effect for a period not to exceed three years and thereafter either party can submit a demand to bargain to change the existing mid-term bargaining ground rules.

Union – These ground rules shall govern the procedures for negotiation of a written binding agreement concerning the bargaining obligation related to changes in working condition and any mid-term bargaining under Article 47 of 2011 Master Agreement between VA and AFGE. The parties may, by mutual consent, modify these ground rules.

The Agency provided the Panel with a list of what they thought to be agreed upon provisions in this negotiation. Included in that document, was language agreed upon for Article 1:

Article I – Preamble

a. These ground rules are entered into by the Department of Veterans Affairs, Greater Los Angeles Healthcare System (hereinafter referred to as "Agency" and the American Federation of Government Employees Local 2297 (hereinafter referred to as the "Union").

b. These ground rules shall govern the procedures for negotiation of a written binding agreement concerning the bargaining obligation related to changes in working condition and any mid-term bargaining between Agency and the Union for all bargaining unit employees included in the certification of Local 2297. The parties may, by mutual consent, modify these ground rules in writing for specific bargaining issues.

The Union provided no disagreement or response to the Agency's submission. The Agency provided no explanation for its additional proposal submitted in their rebuttal. The Union's proposal is supported by the Statute and case law. When the parties negotiate an MOU, where the parties have not specified otherwise, the terms of that MOU will run contiguous with the master CBA. In this case, unless agreed to otherwise, the ground rules MOU would remain in effect until the 2011 MOU is renegotiated.

The Panel orders the parties to adopt the provisions offered by the Agency as previously agreed upon Article 1, with modification:

Article I - Preamble

a. These ground rules are entered into by the Department of Veterans Affairs, Greater Los Angeles Healthcare System (hereinafter referred to as "Agency" and the American Federation of Government Employees Local 2297 (hereinafter referred to as the "Union")

b. These ground rules shall govern the procedures for negotiation of a written binding agreement concerning the bargaining obligation related to changes in working condition and any mid-term bargaining between Agency and the Union for all bargaining unit employees included in the certification of Local 2297. These procedures remain in effect consistent with the 2011 Master CBA between the VA and AFGE. However, the parties may, by mutual consent, modify these ground rules in writing for specific bargaining issues.

2. Role of Chief Negotiator

* Designation of team members

Union – Determining the Negotiation Committee members and sub group members, if applicable. Designating their alternate Chief Negotiator and Negotiation Committee Alternates.

Agency – Determining the Negotiations Team members, alternative Chief Negotiator and alternative team members.

The Agency prefers the use of the term “team” rather than “committee”. The Agency argued that team members work together, share responsibilities, depend upon each other, and are empowered to carry out consensus decisions. Committees discuss, decide and delegate, measure effectiveness of others, and have individual accountability. In short, by offering the term “team” instead of “committee”, the Agency signaled that they would prefer that the negotiation teams and their designated alternatives be empowered to make decisions at the bargaining table. The Union provided no rebuttal to the Agency’s rationale.

The parties National CBA calls for the establishment of a local negotiations committee:

Article 46, Section 3 (B) The parties agree to establish a local negotiating **committee** consisting of an equal number of representatives of the local union and Department. Each party shall be represented by a Chief Negotiator. The parties further agree that all members of the Local Negotiating Committee will have the requisite authority to negotiate on behalf of their respective party. (emphasis added)

In practice, the semantics are a distinction without a difference in this unit. The Panel orders the parties to adopt the term “committee” as it is reflected in the national CBA. The national parties have already agreed that all of the bargaining committee representatives are vested with the authority to make decisions on behalf of their respective party. As for the language regarding the use of subgroups, that discussion is below. This ordered language is consistent with that discussion; preserving the authority for the Chief Negotiators to designate a subgroup by mutual agreement. The Panel orders the parties to adopt the following language:

Determining the Negotiations Committee members, alternative Chief Negotiator, alternative Negotiation Committee members and sub group members (if a subgroup is mutually agreed by the parties).

* Requesting mediation from FMCS

Union – Each Chief Negotiator or either party may request mediation from FMCS.

Agency - Either team may request assistance from Federal Mediation Conciliation Services prior to declaring a matter is at Impasse.

The Union offered that FMCS mediation is helpful in getting parties to move forward with negotiations. The Agency offered no justification for their language. The Agency's language provides that either party can contact FMCS and involve them in the parties' bargaining process prior to reaching impasse. The Master CBA recognizes that the local parties may use alternative dispute resolution (ADR) or other methods, or they may initiate the statutory impasse process.

Article 46, Section 3(G) If the Local Negotiating Committee has not reached agreement on a Local Supplement at the conclusion of the bargaining schedule, either party may use ADR or other methods, or elect to initiate impasse procedures. Moreover, neither party waives any rights regarding statutory impasse procedures.

The involvement of a mediator in the parties' negotiations can be helpful in bringing resolution to the negotiations, prior to the point where the parties become entrenched in their positions or after that point. The Panel orders the parties to adopt the following language:

Either committee may engage ADR assistance (e.g., FMCS) by mutual agreement prior to declaring a matter is at impasse.

* Joint responsibilities of the Chief Negotiators

Union - The Chief Negotiators are jointly responsible, by mutual agreement, for agreement to the presence of observers and the formation of a subgroup.

Agency – Chief Negotiators must mutually agree to have observers, subject matter experts and/or technical advisors in attendance during each bargaining session.

The Union argued that each committee's Chief Negotiator is aware of their party's interests and positions, and what the committee needs to support their interests. The Union argued that each Chief Negotiator, without the need for mutual agreement,

should have the authority to bring a subject matter expert (SME) and a technical advisor (TA) into the bargaining to support their position.

In its submission and its rebuttal, the Agency questioned the need for observers and what their role would be. The Agency believes that the bargaining session should not be open to the public, nor should it be used for training. Therefore, the Agency would only allow for observers by mutual agreement. The Union proposed language indicated agreement on observers. As for the need for SMEs and TAs, the Agency argued that the Chief Negotiators should consider the issue that is on the bargaining table and appoint team members accordingly; include the SMEs and TAs on the bargaining team, not as additional people at the table. If a party would like to have additional people involved in the bargaining process, above the representation authorized by the ground rules, that should only be by mutual agreement.

The Panel orders the parties to adopt the following language that recognizes that joint agreement is required to add an observer, a SME or a TA to the bargaining process. As for subgroups, the Panel orders that the language reflects that subgroups can only be formed by mutual agreement.

Chief Negotiators must have mutual agreement regarding: observers, subject matter experts, technical advisors or bargaining subgroups.

3. Days, times and length of negotiation sessions

Union – The parties will meet no less than 1 day per week up to 8 hours per day. The exact date and time of the negotiation session is by mutual agreement and is determined by specific bargaining issues. Union officials' VA work schedule will be reduced accordingly based on frequency and duration of bargaining sessions. Supervisors will be informed by the agency in advance to release union officials to attend preparation and negotiation activities.

Union – The Chief Negotiators are jointly responsible for mutually determining the starting and ending time for all bargaining sessions. Lunch and breaks will be scheduled by mutual consent

Agency - The Parties will negotiate three days a week Mondays, Wednesdays & Fridays, four (4) hours each day beginning 8:30 AM until 12:30 PM on each day. The Parties can mutually agree to schedule more sessions, if required.

AFGE Local 2297 represents both professional and non-professional bargaining units at the VA Los Angeles Ambulatory Care Clinic. In its submission and its rebuttal, the Union explained that most of the Union representatives work in the clinic as Doctors, Physician Assistants, Nurses, and Social Workers. None of the Union leaders in this local are full-time representatives for the bargaining unit. They all interact with Veteran patients performing clinic duties on a daily basis, the scheduling of which are done 2-3 months in advance. The Union argued that the VA motto is to place patient care needs above everything else. In order to accommodate patient care needs, the parties need flexibility in tailoring the negotiation scheduling accordingly. The Union argued that a one-size-fits-all schedule will not work for every negotiation, especially if that entails cancelling and inconveniencing patients. The Union proposal focuses on allowing flexibility, while still allowing the Agency the ability to forecast the implementation of directives and changes.

In its submission and its rebuttal, the Agency also argued that the establishment of days, times and length of sessions is advantageous for both parties. However, the Agency focused on the need to expedite bargaining in order to implement changes effectively. Bargaining matters centering around patient care, such as moving clinics, offices, renovations, changing tours of duty, parking, as well as any other change in working conditions that have an impact on bargaining unit employees, should be addressed efficiently, without delays caused by scheduling constraints. The Agency is seeking to pre-establish a bargaining schedule, which can be planned for in scheduling the implementation of change. The Agency's proposal also provides for the opportunity to add bargaining days to the schedule, if that becomes necessary to reach resolution.

Pre-determination of the bargaining sessions will facilitate scheduling of the bargaining committee participants and will help with anticipating the implementation of changes. While the Agency's proposed bargaining schedule anticipates a large time commitment (if needed to reach agreement), the Agency has already committed¹ that it will be responsible for ensuring the bargaining committee members are released from their duties in order meet the bargaining scheduling demand, otherwise, through no fault of the Union, the bargaining must be rescheduled (work demands come first).

The Panel orders the parties to adopt the following language:

¹ Master CBA - Article 46, Section 3(E) - The Department will ensure the availability of all Local Negotiating Committee team members.

The Parties will negotiate three days a week: Monday, Wednesday & Friday, four (4) hours each day beginning 8:30 AM until 12:30 PM on each day. Breaks will be scheduled by mutual consent of the Chief Negotiators. The Parties can mutually agree to schedule more sessions, if required. Supervisors will be informed by the Agency to release the Union bargaining committee member to attend preparation and negotiation activities. If the Supervisor cannot release the Union bargaining committee member due to work requirements, the bargaining sessions will be rescheduled to a mutually agreeable time when the Union bargaining team member can be released. Where the bargaining committee representative is unavailable through no fault of their own (i.e., supervisor cannot release them due to work demands), then the bargaining session will be rescheduled to accommodate the work demands. If, however, the committee representative is unavailable due to their own personal reasons (e.g., annual leave or sick leave), then that team's Chief Negotiator will appoint a designated alternative.

4. Once bargaining commences, consecutive days until finished or at impasse.

Union - [Same as Section 3 above] The parties will meet no less than 1 day per week up to 8 hours per day. The exact date and time of negotiation session is by mutual agreement and is determined by specific bargaining issues. Union officials' VA work schedule will be reduced accordingly based on frequency and duration of bargaining sessions. Supervisors will be informed by agency in advance to release union officials to attend preparation and negotiation activities.

Agency – Once bargaining commences, the Parties will continue meeting consecutively each week on the designated days, times agreed upon unless mutual agreement is reached to do otherwise.

In its submission and its rebuttal, the Union argued that due to clinic duties, negotiation sessions need to be arranged around clinic duties. Due to short staffing at the VA, the Agency proposal of consecutive days until finished or at impasse will result in patient care coming to a halt for the affected providers who are negotiation committee members. The Union argued that this is unethical and exposes the Agency and its employees to public criticism and ridicule. The Union offered that their proposals will allow the parties to consistently move forward.

The Agency argued the purpose of their proposal is to expedite the bargaining process. The Parties designate alternates with the expectation that if one member is unavailable, others can step in. Additionally, the Agency argued that Union representatives on the negotiation team will not be responsible for performing duties, unless called or requested to perform emergency work. The Parties should not have difficulty moving the bargaining forward if there is commitment to continue the bargaining sessions using designated alternatives team members. The Union argued that alternatives slow down the bargaining process.

The Parties agreed to allow for the designation of alternative bargaining committee members². So the question becomes when will the alternates be used. Where the bargaining committee representative is unavailable through no fault of their own (i.e., supervisor cannot release them due to work demands), then the bargaining team should not be forced to bring in their substitute. In that case, the bargaining session should be rescheduled to accommodate the work demands. If, however, the committee representative is unavailable due to their own personal reasons (e.g., annual leave or sick leave), then the other bargaining team should not be forced to reschedule the bargaining session, but should be able to rely on the appointment of an alternative.

As for the procedure should agreement not be reached in the first week scheduled for bargaining, the Union is seeking for additional bargaining sessions to be scheduled by mutual agreement. The Agency is seeking for the bargaining sessions to continue into subsequent weeks (not subsequent days as the Union believes). The Agency is seeking to continue the three-days-a-week schedule: Monday, Wednesday & Friday, four (4) hours each day beginning 8:30 AM until 12:30 PM on each day. While the Parties can mutually agree to schedule more sessions; if required, the Agency is seeking to stay with the bargaining until it is complete. This continuation of scheduling would put a continued burden on the Agency to release the bargaining team members from work duties to meet the bargaining demand. The same principle will apply to additional bargaining sessions, as applied to the first session: where the bargaining team representative is unavailable through no fault of their own (i.e., supervisor cannot not release them due to work demands), then the bargaining team should not be forced to bring in their substitute. In that case, the bargaining session should be rescheduled to accommodate the work demands. If, however, the team representative is unavailable due to their own personal reasons (e.g., annual leave or sick leave), then the other

² Master CBA, Article 46, Section 3 (C) - Each Chief Negotiator may approve attendance of alternates at Local Negotiating Committee sessions. The alternate will have the full rights, responsibilities, and authority of the Local Negotiating Committee member for whom they are substituting.

bargaining team should not be forced to reschedule the bargaining session, but should be able to rely on the appointment of a designated alternative.

The Panel orders the parties to adopt the following language:

Once bargaining commences, the Parties will continue the three-days-a-week schedule: Monday, Wednesday & Friday, four (4) hours each day beginning 8:30 AM until 12:30 PM on each day, unless mutual agreement is reached to do otherwise. Where the bargaining team representative is unavailable for the continued bargaining sessions through no fault of their own (i.e., supervisor cannot release them due to work demands), then the bargaining session will be rescheduled to accommodate the work demands. If, however, the team representative is unavailable due to their own personal reasons (e.g., annual leave or sick leave), then that team's Chief Negotiator will appoint a designated alternative.

5. Modifications to negotiation schedule.

Union – The parties will work out a bargaining schedule based on specific bargaining issue to expedite negotiation; however, in unforeseen circumstances such as schedule conflict, Annual Leave, Administrative Leave, either party may reschedule the scheduled bargaining sessions with 24 hours advance notice. Cancellation due to Emergency Leave, Sick Leave or circumstances beyond [a parties'] control will be communicated to the other party as soon as possible. Bargaining Sessions will be rescheduled if team members cannot be released for official time or when the work load is not reduced.

Agency – The Parties must meet as scheduled and participate as outlined in the Local Level Ground Rules for bargaining. Only in rare circumstances will there be an exception and that is if there is no quorum as the result of management's decision not to release alternate team members to participate on their bargaining team. This only will apply when designated team members are unavailable.

The Union offered the same rationale as provided in sections 3 and 4 above. The Agency argued that if either party is allowed to deviate or modify the negotiation sessions, there will be a significant delay in the completion of bargaining process.

As the parties have been ordered to adopt the language proposed above, all reasons for modification to the schedule are accounted for (e.g., work demands that prohibit release, sick leave, annual leave, designation of an alternative), including when the parties choose to modify the schedule through mutually agreement. Therefore,

these proposals are unnecessary. The Panel directs both parties to withdraw their proposals regarding modifications to the negotiation schedule.

6&7. The number of days until **briefing** occurs after demand to bargain.

The number of days until the **negotiation session begins** after briefing.

Union – If either party initiates a demand to bargain, briefings will occur within 20 workdays of the demand to bargain. Proposals will be submitted 20 workdays after the briefing. Any demand to bargain must be submitted within 20 workdays from the date the parties receive the proposed change. Extensions or reductions of the 20 workdays time period will be by mutual agreement, based on particular bargaining issue.

Agency – Once notification is provided that there is a demand to bargain, the briefing, if requested, will take place within 10 workdays after receipt of the demand to bargain. If no briefing is requested, the Parties will commence bargaining 20 workdays from the initial notification of a demand to bargain.

The Parties will commence bargaining ten work days after the briefing is provided.

In its written submission and its rebuttal, the Union argued that negotiations vary in complexities. Some may require more time in the formulation of proposals, others may not. Because the Agency wants a one-size-fits-all ground rule for all future negotiations, the parties must make sure that the timeline agreed to will be sufficient to get the job done and can be shortened for less complex negotiations, by mutual consent. The Union believes that the Agency's timeline is unreasonable. Instead, the Union offered a timeline consistent with National-level ground rules outlined in Article 47 Mid - term bargaining of Master Agreement between VA and AFGE.³ Finally, due to clinic constraints, the Union argued that it is counterproductive to impose a set time

³ Article 47, Section 2 (b) - If either party initiates a demand to bargain, briefings will occur within 20 workdays of the demand to bargain. Proposals will be submitted 20 workdays after the briefing. Any Union demand to bargain must be received by the designated Department official within 20 workdays from the date the NVAC President or designee receives the proposed change. The date of receipt shall be documented on a simple form agreed upon by both parties. Extensions or reductions of the 20 workday time period will be by mutual agreement.

frame for negotiation to begin because scheduling will depends on when the bargaining team members' schedules can be cleared for negotiation.

The Agency argued that the proposed timeline provides either party with 30 calendar days to formulate proposals and commence bargaining. It is the Agency's position that this timeline is more than a reasonable period of time for the party's to gather information and formulate proposals. The parties will commence bargaining ten (10) work days after the briefing is provided. This will give the parties three weeks from the notice of the change to prepare proposals/counterproposals. The Agency further argued that without a specific number of days to commence bargaining, either party could take whatever time they needed or didn't need to formulate proposals.

The structure for scheduling the briefing and commencing bargaining is important to formulating proposals, planning for the release of bargaining team members, and planning for the implementation of change. The Panel orders the parties to adopt modified language regarding the number of days until briefing occurs after demand to bargain and the number of days until the negotiation session begins after briefing:

If either party initiates a demand to bargain, briefings will occur within 10 workdays of the demand to bargain. Initial proposals will be submitted 10 workdays after the briefing. Any demand to bargain must be submitted within 10 workdays from the date the parties receive the proposed change. Extensions or reductions of the 10 workdays time period will be by mutual agreement, based on particular bargaining issue.

Consistent with the three-days-a-week schedule: Monday, Wednesday & Friday, four (4) hours each day beginning 8:30 AM until 12:30 PM on each day, unless mutual agreement is reached to do otherwise, the Parties will commence bargaining no more than ten work days, but on the next available Monday after the proposals are submitted.

8. Size of bargaining teams.

Union – The Union will be authorized the same number of Union representatives on official time as the Agency has representatives at the negotiations table; however, there will be no less than four (4) union representatives authorized for negotiations. The size of team maybe modified by mutual agreement of chief negotiators for specific bargaining issues.

Agency - Each bargaining team will consist of a Chief Negotiator, two team members receiving official time and one alternate. Each Party must provide in writing, the names and contact information of its respective representatives within ten (10) calendar days of its request to bargain.

The Union argued that negotiations vary in scope and complexities. Some may require more diverse views and skills commensurate with the scope and complexities, others may not. Because the Agency wants a one-size-fits-all ground rules for all future negotiations, we have to be sure that the bargaining team size agreed to will be sufficient to get the job done. The Union argued that the size of the impacted bargaining unit does not determine the size of the team; the complexity of the issue determines the size of the team. Additionally, the Union offered that the bargaining team size that they have proposed is consistent with that outlined in Article 47 Mid Term Bargaining regarding National level negotiations in the Master Agreement between VA and AFGE. Therefore, they argued, the size of bargaining team is covered by the Master Agreement between the parties. Finally, the Union argued that their proposal provides flexibility based on the complexity of bargaining issues and can be decreased for less complex negotiations.

The Agency acknowledged that in accordance with 5 U.S.C. 7131 and the Master CBA⁴, the Union may have as many members on its team receiving official time⁵ as members on the management team. However, the Agency argued that while the AFGE Master Agreement may provide for 4 team members to perform national level mid-term bargaining, there is no way a Local unit, with approximately 250 members, would need more than three team members receiving official time. If the Agency limits their team to 3 members, there would be no entitlement for the Union to have more than 3 members on official time.

The Panel orders the parties to adopt the following language to achieve parity and consistency:

⁴ Article 46, Section 3 (B) - The parties agree to establish a local negotiating committee consisting of an equal number of representatives of the local union and Department.

⁵ Article 46, Section 3 (B) - The parties agree that all local union members of the negotiating committee will be on official time for the previously described negotiation process.

The Union will be authorized the same number of Union representatives at the negotiations table as the Agency has representatives at the negotiations table. Those representatives will be on official time. Normally, each bargaining committee will consist of a Chief Negotiator and two committee members. The size of local negotiating committee may be modified by mutual agreement of Chief Negotiators for specific bargaining issues.

9. Length and Number of Caucuses

Union – Each team Chief Negotiator is responsible for calling caucuses as the need arises. There will be no arbitrary constraints on the length and number of caucuses.

Agency - Either Party may call a caucus during the bargaining session. The Party requesting the caucus will leave the negotiation room to caucus in an alternate location. Each party will be limited to three caucus periods with no more than 20 minutes in duration for each caucus period.

The Union argued that to put arbitrary constraints on length and number of caucuses is counterproductive and would hinder the bargaining process. Both parties are bound by good faith bargaining as required by the Federal Labor Relations Statute. If a new proposal is put forth by one party, the other party should be given a chance to study and fully discuss among themselves whether they would accept the proposal. The Agency argued that it is necessary to limit the number and length of caucuses, otherwise, many sessions could cause significant delays and be very unproductive.

Caucuses can be effective as they allow parties to discuss issues and concerns outside of the bargaining table. Caucuses should be reasonable and used in a manner that is consistent with the principle of good faith bargaining, otherwise abuses are subject to an Unfair Labor Practice complaint.

The Panel orders the parties to adopt the following:

Each team Chief Negotiator is responsible for calling caucuses. The Party requesting the caucus will leave the negotiation room to caucus in an alternate location. The number and length of the caucuses will be reasonable and consistent with good faith bargaining under the Federal Labor Statute.

10. The presence and the role of observers, SMEs, technical advisors, alternatives and sub groups.

Union – Observers: The Chief Negotiators are jointly responsible for agreeing to the presence of observers.

Subject Matter Experts: The participation of any subject matter experts (SME) shall be for providing resource information mutually beneficial to the parties. SMEs will remain silent and play no role in the negotiation process unless authorized by the Chief Negotiators. SMEs may be asked to respond to questions posed by either party. When authorized, SMEs may only comment on matters within the scope of their expertise. SMEs who are VA employees will be on duty time. SME do not need to be jointly agreed to.

Technical Advisors: There is no need for Technical Advisors

Alternatives: Each Chief Negotiator may approve attendance of Alternates at Negotiating sessions for their team. The alternate will have the full rights, responsibilities and authority of the Negotiation Committee member for whom they are substituting.

Sub Groups: The negotiating teams may mutually agree to establish sub groups. Individuals appointed to serve on a sub group will be on 100% official time when the sub group is in session. If preparation time is needed, it will be addressed by the Chief Negotiators.

Agency – Subject matter experts (SMEs) and technical Advisors (TAs) must be mutually agreed upon in advance by the Chief Negotiators. SMEs and TAs will have no role in the negotiation process. Alternates will have the full authority to speak and reach agreement for members for whom they substitute. Approval of sub groups must be made by mutual consent of the Chief Negotiators.

Regarding observers, the Union argued that the number and type of observers should be mutually agreed upon. Otherwise, the group can be too large or unwieldy, and may affect the atmosphere of the negotiation sessions. The Agency argued that there must be mutual consent by the Parties to have anyone in attendance during the bargaining sessions outside of the designated team members. Without any oversight or restrictions, these sessions will become unmanageable and unproductive. The parties were in agreement that the presence of observers should be by mutual consent.

Regarding SMEs, the Union argued that either Party may have their own Subject Matter Experts. This will allow for diverse views to be discussed. It should not need to be mutually agreed upon. The Agency argued that SMEs are costly additions to the

bargaining process. The SMEs should only be called in when their role enhances the bargaining process for both parties. Their involvement should be by mutual consent. In its rebuttal, the Agency also proposed that once the SME is done presenting, they should be dismissed from the bargaining room.

Regarding technical advisors, the Union argued that the parties do not need technical advisors in their negotiations. The parties have already added a provision to the article that allows for SMEs, which could provide for the additional expertise needed. The Agency offered that the parties can add a technical advisor by mutual consent, if needed. There is no need to have language addressing technical advisors. If the parties agreed that they need one, they can always add them.

Regarding alternates, the Union offered language similar to that in the Master CBA⁶, providing that each party will be allowed to name its own alternates. The Agency proposed that alternates will have the full authority to speak and reach agreement for members for whom they substitute. As reflected in the Master CBA, each party should be able to determine who their representatives are, and who their alternates to those representatives will be. As the representatives have the authority to speak on behalf of the party, so too should the alternates. Neither party has proposed enhancing the Master CBA; therefore, the Master CBA language should be reflected.

Regarding sub groups, the Union proposed that the negotiating teams may mutually agree to establish sub groups. Individuals appointed to serve on a sub group will be on 100% official time when the sub group is in session. If preparation time is needed, it will be addressed by the Chief Negotiators. The Agency proposed that the parties can add sub groups by mutual agreement of the Chief Negotiators. There is no need to have language addressing sub groups. If the parties agree that they need to establish a sub group, they can always create the team as needed.

The Panel orders the parties adopt the following language:

⁶ Article 46, Section 3 (C) - Each Chief Negotiator may approve attendance of alternates at Local Negotiating Committee sessions. The alternate will have the full rights, responsibilities, and authority of the Local Negotiating Committee member for whom they are substituting.

Observers: The Chief Negotiators are jointly responsible for agreeing to the presence of observers.

Subject matter Expert (SME): The participation and role of any SME shall be by mutual agreement of the Chief Negotiators and shall be for providing resource information mutually beneficial to the parties. SMEs who are VA employees will be on duty time. Once their presentation is complete, they should be dismissed from the bargaining process.

Alternates: Each Chief Negotiator may approve attendance of alternates at Local Negotiating Committee sessions. The alternate will have the full rights, responsibilities, and authority of the Local Negotiating Committee member for whom they are substituting.

11. Costs associated with travel for negotiations.

Union – Travel time incurred by any union team member that is required to travel to and from negotiation site from usual duty station will be considered and granted as additional official time.

Where travel to another location within the jurisdiction of a local union is necessary for representational activities consistent with the provisions of this agreement, and the transportation is otherwise being provided to the location for official business, the union will be allowed access to the transportation on a space available basis and also authorized official time for travel. Personal transportation expenses (POV, mileage, etc.) will be reimbursed to the extent permitted by Federal Travel Regulations.

Agency – Respective Parties are responsible for any and all costs associated with Travel and Per Diem for any participation in these ground rule bargaining sessions and future mid-term bargaining affecting AFGE Local 2297.

As for the official time to participate in the bargaining process, the Union is seeking to ensure that it can effectively cover its entire bargaining unit, from downtown LA to the West Los Angeles campus. The Union is seeking to make it is clear that negotiation committee representatives are entitled to be on official time for all events covered in the negotiation process: the bargaining of ground rules, the face-to-face bargaining, preparation, facilitation, travel time, mediation, and impasse. While the entitlement for official time for some of these activities are covered by Section 7131 of

the Federal Labor Relations Statute, the National parties⁷ have already agreed to provide official time for the statutory representation activities as well as other related bargaining process activities.

As for travel to participate in the bargaining process, the Union is seeking transportation for bargaining team members that may not be co-located with the bargaining location, but, instead are in another facility in the GLA area. The Union offered that if the transportation (e.g., Patient Shuttle) is otherwise being provided to the location for official business, and there is space available, that the bargaining team members will be allowed to use the transportation.

The Agency argued that the parties agreed that all mid-term bargaining sessions for AFGE Local 2297 will be held at the Los Angeles Outpatient Clinic, where 98-99% of the bargaining unit employees work. If the Union wants to appoint team members from outside of the Los Angeles Outpatient Clinic, they can do so at their own expense.

The Agency recognized that the Union is free, under the Statute, to appoint the representative of their choosing. And, the entitlement to official time for the local representatives to participate in the negotiations process has already been addressed by the parties at the national level. The parties at the National level have also already addressed the entitlement of local representatives to travel to participate in the bargaining⁸. Which then leaves the Union's interest in using the Agency's transportation services that are already in operations and otherwise not full. As the Agency has already agreed to travel expenses, there would be a cost savings in allowing the representatives to use the VAs transportation services.

The Panel orders the parties to adopt the following language:

⁷ Article 46, Section 3 (B) - The "negotiation process" is: the establishment of ground rules, face-to-face bargaining, preparation, facilitation, approved travel time, mediation, impasse, and third-party proceedings. The parties agree that all local union members of the negotiating committee will be on official time for the previously described negotiation process.

⁸ Article 46, Section 3 (D) - The Department agrees to pay the travel and per diem for all local members of the Local Negotiating Committee pursuant to the Federal Travel Regulations.

Travel time incurred by a union committee member that is required to travel to and from the negotiation site from their usual duty station will be official time.

Consistent with Article 46, Section 3 (D) of the National CBA, the Agency will pay the travel and per diem for all local members of the Local Negotiating Committee pursuant to the Federal Travel Regulations.

Where transportation is otherwise being provided to the negotiations location for official VA business, the union will be allowed access to the transportation on a space available basis.

Personal transportation expenses (POV, mileage, etc.) will be reimbursed to the extent permitted by Federal Travel Regulations.

12. Transfer of Official Time to other representatives during negotiations.

Union - Transfer of union bargaining team members' official time that would otherwise be used by the union officials participating in negotiations shall be transferable to another union official to represent bargaining unit employees. The receiving bargaining unit employee will be released unless the release of the employee will adversely impact the mission. If granting the official time will adversely impact the mission, management will ensure that, within 1 business day, an alternate time will be permissible for the use of the requested transferred official time.

Agency – Management will consider any request from the Union to transfer official time to another employee while designated members with official time are serving in mid – term bargaining sessions. The Union must submit their request to the employee's supervisor with at least a 10-day advance written notice. Employees serving as team members during the negotiation sessions will not be allowed to bank official time hours.

The Union argued while a negotiation team member is busy with preparation and negotiations meetings, their other usual official time representational activities will not be attended to in a timely manner. As there are time-sensitive issues that need to be dealt with, they may need to get other employees to perform the representational duties. In that situation, other representatives need to be released in a timely manner to attend to a time-sensitive labor relations issue.

The Agency argued that they have proposed a bargaining schedule of three days a week and 4 hours in duration, and only when there is a change that requires bargaining. This time block should allow the Union representatives to continue to meet its other representational commitments. Additionally, the Agency proposed that only two employees would be receiving the designated official time for negotiations, so other Union representatives remain available for representational activities. The Agency argued that allowing those representatives to transfer their official time to another representative would create a scheduling hardship on the Agency and the Veteran patients.

The Union representative, who is participating in the negotiation process, is entitled, under the Statute, the Master CBA, and the provisions already agreed to by the parties, to official time for that activity. Under the Master CBA, a national representative participating in national bargaining is entitled to official time for that activity and that official time is not charged against their official time allotment.⁹ Under the agreed upon provisions, the local representative participating in local bargaining is entitled to official time for that activity and that official time is not charged against their official time allotment¹⁰. The Master CBA allows the parties to negotiate for local transferring of official time. The Agency's position is based upon their concern that if they were to allow for transferring official time, the Union would be getting extra official time over their bank of time; arguing that there is no need to add time because the negotiations activity should be nominal. The Union argued that they should be able to transfer their representational duties to another representative in their absence due to bargaining and, similar to the national level and under the locally agreed provisions, they should be able to transfer their time.

The parties have agreed that the representatives participating in the bargaining process are not using their local official time bank to perform those duties. The representative that are left behind to perform the day-to-day operations should be

⁹ Article 48, Section 4 - Time spent in connection with national bargaining and LMR Committee meetings shall not be charged against other official time allotted.

¹⁰ Article 3 (i) - Union officials shall have official time for all phases of negotiations, including: ground rules; preparation of proposals and counterproposals; breaks; caucuses; and time at the bargaining table and travel. All such Official time listed in item m3a through 3h is not to be counted against any time allocated in the Master Agreement between the Agency and AFGE/NVAC. The official time is in addition to the official time that the local currently has for handling grievance and other representation functions by past practice.

granted that official time to cover those duties; the official time that would have been used by the negotiation committee member representative. As the allotted local official time hours should not be impacted by this transfer of duties, the only impact there would be is if the Union representative that is engaged in the bargaining process was conducting their representation duties on official time that is not counted as a part of the local allotment; a percentage-based official time official. The Master CBA provides for some national representatives (e.g., National President) to be on %-based official time (e.g., 100% or 50%). Those individuals' official time are not counted against a bank of time¹¹. In addition, the national parties have agreed that if representatives are called upon to cover that %-based representatives duties, that additional representatives will be granted official time, which will not come out of the official time bank (since the official time of the %-based representative that they are covering did not come out of the bank). The Union is seeking to replicate that national-level practice at the local level.

Identifying a replacement representative to continue representing the bargaining unit employees in the absence of the Union committee member would be efficient for both parties. However, the Union presented no evidence to demonstrate that the local official time bank would not be sufficient to support a replacement to the Union committee member engaged in the bargaining schedule (i.e., three days a week and 4 hours in duration). The Panel is not convinced that there is a need to order transferred or additional official time.

The Panel orders the parties to adopt the following language:

While a bargaining committee member, who is otherwise using official time that is not counted against the local allotment, is performing official duties in the bargaining process, the Union may designate another employee to performance that bargaining committee members representation duties. That additional representative will provide advanced notice to their supervisor and will be granted official time to perform representational duties.

¹¹ Master CBA, Article 48 -Official Time, Section 2 (G) - provides for an allotment of 25,000 houses each year, assigned by the National President, to support the representational functions.

13. The timing and the completeness of proposals exchanged.

Union – Proposals will be submitted 20 workdays after the briefing. Extensions or reductions of the 20 workdays time period will be by mutual agreement based on particular bargaining issue.

Additional proposals may be proposed in writing at the negotiation table and at any time prior to the completion of negotiations.

Agency – The Chief Negotiators will exchange a complete set of proposals 5 days prior to the scheduled bargaining session. Either Party by mutual consent may submit new proposals.

The Union argued that as negotiation progresses, both parties gained deeper insights of the issue and the parties should be allowed to submit amended proposals and even new proposals. The Agency argued that the importance of submitting a complete set of proposals prior to bargaining is to expedite the bargaining process. If either party is allowed to submit new proposals throughout the bargaining sessions, implementation will be delayed.

The reality is the parties gain greater insight over the proposed change (and often additional information) throughout the bargaining process and should be able to amend their proposals accordingly. There is significant give-and-take (amending) that typically occurs through the bargaining process, which would be stifled if a party was not free to amend their proposals with the aim toward facilitating resolution. On the other hand, submitting new proposals can amount to an ambush in the bargaining process. The number of days when the initial proposals are due has already been addressed above.

The Panel orders the parties to adopt the following:

Initial proposals will be submitted 10 workdays after the briefing or sooner. Amended proposals may be proposed in writing at any time, including at the negotiation table. The parties, by mutual consent, may accept new proposals.

14. The finality of a tentatively agreed to provision.

Union – Proposals will be initialed off as TA and dated by both parties to indicate tentative agreement and is not binding as it may be contingent on other conditions which have not been agreed upon. It will be kept in TA section of the binder.

Agency – During negotiations, the Chief Negotiator for each party will verbally signify tentative agreement on each ground rule proposal. Tentative agreements on an article may be revoked by either party at any time before the Chief Negotiators signs the final proposal. The Parties may reconsider or revise any signed article only by mutual consent. No signed article is binding and effective until the entire agreement is executed by the parties consistent with this MOU.

The Union argued tentative agreements are neither final nor definitive. The Agency argued that either party may submit counter proposals on any proposal that was not initialed as final agreement. If parties are allowed to continuously bargain at any time over agreed upon proposals, bargaining will never be completed.

The Federal Labor Statute requires parties to negotiate in good faith with a sincere desire to reach agreement. Tentative agreement by definition means that while that mutual agreement around a provision is a positive step towards an ultimate resolution of the matter, either party is free to reopen the discussion over parts of the agreement until the entire issue is resolved. These two ideas can and do work together. Because the parties must be committed to reaching agreement, the need or desire to reopen agreed upon language should be at minimum, or the offending party will likely be called to answer a good faith bargaining claim. Additionally, the parties have already agreed to some language (Article 2, (h)(4) and (5))¹² that provides that tentative agreement of proposals (i.e., DA) will be initialed off, but will not be final until the entire MOU is final.

Along with the language the parties have already agreed to, the Panel orders that the parties adopt the following language regarding tentative agreements:

As limited by the Federal Labor Statute and the Authority, tentative agreements on a provision may be revoked by either party at any time before the Chief Negotiators sign the final agreement.

15. The application of the ground rules to midterm bargaining with AFGE Local 2297.

¹² Article 2 (h)(4) - Proposals will be initialed off as DA and dated by both parties to indicate definitive agreement and is binding. It will be kept in DA section of the binder.
Article 2 (h)(5)- None of the proposals will be implemented until the entire MOU is complete and signed.

Union – The ground rules do not apply to negotiations between the Agency and all three locals AFGE L-1061, L- 2297 and L-3943 that represent Greater Los Angeles Healthcare System.

Agency – These ground rules will be used exclusively for all mid-term level bargaining matters that affect or impact bargaining unit employees represented by AFGE Local 2297.

The Union argued these ground rules should only apply to the midterm bargaining with AFGE Local 2297. The Agency argued that these ground rules will be used for all future midterm bargaining matters that affect AFGE Local 2297 only. Currently, there are two other AFGE Locals that represent the majority of employees at the Greater Los Angeles VA Medical Center. These ground rules would not apply for AFGE Locals 1061 & 3943.

The parties are seeking a similar coverage outcome. The Agency has already agreed to this language. In its submission during the investigation, the Agency provided a list of provisions that the Agency believed was already agreed upon. The Union did not contest that offering.

The Panel orders the parties to adopt the language that has already been agreed upon between the parties:

Article 1

b. These ground rules shall govern the procedures for negotiation of a written binding agreement concerning the bargaining obligation related to changes in working condition and any mid-term bargaining between Agency and the Union for all bargaining unit employees included in the certification of Local 2297. The parties may, by mutual consent, modify these ground rules in writing for specific bargaining issues.

16. Authority of the bargaining committee.

Union – The parties agree that all members of the Bargaining Committee have the requisite authority to negotiate on behalf of their respective party. A written delegation of authority from the Director or Acting Director and the President or Acting President of AFGE Local 2297 respectively is required if they themselves are not the Chief negotiator of the Bargaining Teams. The delegation of authority if applicable will be provided within 8 business days of the receipt of the demand to bargain by both parties.

Agency - Chief Negotiators are responsible for designating alternate team members and Chief Negotiators.

The Union argued that per bargaining history, on or about 10/19/2017, this is the compromised language agreed to by management and union, and provided for in the Master National CBA¹³ The Agency offered no rebuttal to the Union's statement.

The Panel orders the parties to adopt the following proposal:

The parties agree that all members of the Bargaining Committee have the requisite authority to negotiate on behalf of their respective party.

17. Sharing the negotiation-related communications with the Union.

Union – Any Negotiation related communication will be by personal service, phone, fax, USPS, certified mail or email. If email is used by agency, it will be sent to 258AGLA@va.gov union shared mailbox, and not bargaining team members individual work mailbox or mail group.

Agency – Chief Negotiator for the agency will send all notifications electronically to AFGE Local 2297 via an established email mailbox. Chief Negotiator, AFGE Local 2297, may use any available means of communication to send notification to the agency.

The Union does not object to using email. However, the Union wants to make sure that VA work (usually patient-related and short turnaround time) email and Union email are not comingled. They argued that if the union negotiation emails are comingled with work emails, patient outcome may be adversely impacted. They also do not want duplicate email sent to the Union's shared mailbox and Union official's work email box.

The Agency argued that electronic communications is the most effective and efficient means of communication. Sending communications via certified mail, fax and phone presents various problems and is the least effective and efficient means of communication. The Agency offered that recently the parties had an arbitration award that specified that management can use electronic communications to notify and communicate with AFGE Local 2297.

¹³ Article 46, Section 3(B) - The parties further agree that all members of the Local Negotiating Committee will have the requisite authority to negotiate on behalf of their respective party.

The Panel orders the parties to adopt the following:

Chief Negotiator for the Agency will send all notifications on mid-term changes electronically to AFGE Local 2297 via an established email mailbox (i.e., 258AGLA@va.gov). Chief Negotiator, AFGE Local 2297, may use any available means of communication to send notification to the Agency.

18. Credit hours for Union officials.

Union – Management will allow union officials to earn Credit Hours for the performance of Official Time if it is performed outside of the regular tour of duty with advanced management approval

Agency – Overtime is not authorized for Local level mid-term bargaining. No team member or Chief Negotiator is authorized to work past their regularly scheduled hours of duty. This includes but not limited to preparation time and travel.

The Union argued that sometimes negotiation goes beyond the tour of duty of some negotiation team members. While it may be worthwhile to keep negotiation going under appropriate circumstances, the Union representatives should be authorized, under those circumstances, to earn credit hours, with management approval. The Agency argued Chief Negotiators are not authorized to approve overtime, therefore, credit hours should not be an issue.

The parties have already agreed that travel will only be done during the tour of duty. And, the parties will be directed to adopt discrete bargaining hours through this impasse process (e.g., 830 – 1230). Therefore, in ordinary circumstances, the scheduling of the bargaining process should not cause the negotiation committee members to work beyond their scheduled tour of duty (i.e., the scheduling is controllable). While the parties have also agreed that the Chief Negotiators can change or expand the bargaining session, that change can only be made by mutual agreement. The Agency has signaled that such a change would be unlikely to be agreed to by management's Chief Negotiator given the impact on the tour of duty for all of the bargaining committee members and any entitlements those committee members would have under the law. The Panel orders both parties to withdraw their proposed language.

19. Space and support for bargaining.

Union – A. The meeting space will be roomy enough to hold all participants comfortably. Agency will supply a suitable conference room for negotiations and one conference room for caucuses.

B. The agency will provide computer support, printing and copying support to both teams. Agency will request, set up and provide printer in negotiation space. Printer paper will be provided

C. All proposed language for the agreement will be in hard copy. Additionally, the proposals will be projected in electronic form on a laptop or other media that can be utilized with a projector and screen.

D. Negotiation sessions will not be audio or video recorded by tape recorder, cell phone, tablet or other electronic means etc. Transcripts will not be made of the proceedings of negotiations. However, each party may make and keep its own notes and records

Agency – Management will supply a suitable conference room for negotiations and one conference room for caucuses. All negotiations will be conducted within the Los Angeles Ambulatory Care Clinic property and in a conference room to be designated in advance of the sessions No electronic voice, video recording or verbatim transcripts will be made during the negotiations. Bargaining team members may use non-voice activated lap-tops and may connect to the internet to research, make, and keep its own notes and records. Cellular phones, smartphones and other mobile communication devices will be placed on vibrate or silent mode during all negotiation sessions. No electronic voice, video recording or verbatim. Bargaining team members may use non-voice activated lap-tops and may connect to the internet in order to research, make, and keep its own notes and records transcripts will be made during the negotiations. Cellular phones, smartphones and other mobile communication devices will be placed on vibrate or silent mode during all negotiation sessions.

The parties had already reached agreement on the meeting space. Regarding caucus rooms, the Union argued a separate caucus room is needed in addition to the negotiation room. Oftentimes, the non-caucusing team has to stand around in the hallway. This is not advisable for members who cannot stand for prolonged period due to physical limitation. They also have to carry their personal items, binders and documents out to the hallway. The Agency offered to provide a suitable conference room for negotiations and one separate conference room for caucuses. The parties' language is similar.

Regarding computer and printer support, the Union argued that the support is essential in the conference room so that any counterproposals and agreed upon proposals can be updated on the computer, copied, and printed out for proofreading and signoff in the moment. The Agency offered that each party can bring their laptop and connect to the internet in order to research, draft and redraft proposals, and take notes. The Agency made no offer regarding providing a printer. Having a printer reasonably available would facilitate the negotiation process. The parties have agreed to conduct negotiations in the Los Angeles Ambulatory Care Clinic property. There should be a printer available somewhere on that property that could be used to facilitate the bargaining process. The parties had already agreed to the use of electronics in the bargaining sessions, including recording and creating transcripts. Much of the Agency's language and some of the Union's language were already agreed to by the parties.

Regarding a projector and screen, the Union argued this equipment is essential in the conference room so that both parties will be looking at the same language on the screen. This will cut down on misunderstanding of proposals and counterproposals. The Union also offered that the equipment mentioned is standard equipment at the Agency during staff meetings.

The Panel orders the parties to adopt the following language:

Agency will supply a suitable conference room for negotiations. The meeting space will be large enough to hold all participants. Agency will supply one conference room for caucuses.

A printer will be available to the parties on the LAACC property during the bargaining session.

Standard equipment that is available in a conference room at LAACC will be available to the parties to facilitate negotiations.

20. Hard copy of MOUs.

Union – At the conclusion of negotiation, Agency will prepare and provide hard copy of negotiated language MOU to the union for review and signature.

Agency – All current MOUs will remain in effect until these ground rules are signed.

The Union argued a hard copy needs to be signed off. The Agency stated that they didn't understand the Union's proposal. The parties seem to be addressing two

different bargaining matters: the finality of this MOU regarding the ground rules and the impact of negotiating this ground rules agreement on current MOUs. As for the Agency's proposal, there is no impact on the current MOUs in bargaining this agreement over procedures for bargaining future changes. The state of the current MOUs is embodied in those agreements, or is covered by the terms of the Master CBA. There is no need in addressing those MOUs here.

The Panel orders the parties to adopt the following:

At the conclusion of negotiation of a change in working conditions, the Agency will provide a hard copy of the negotiated MOU to the Union for review and signature.

21. Impasse over issues.

Union – Either party may request assistance of Federal Mediation Conciliation Service (FMCS).

The above procedures do not preclude either party from presenting a substantive counterproposal at any stage of the procedures in the interest of reaching an agreement.

Agency – Either team may request assistance from Federal Mediation Conciliation Services prior to declaring a matter is at Impasse.

If the parties are unable to reach agreement with assistance from the FMCS mediator, either party may request the assistance of the Federal Services Impasses Panel (FSIP) in accordance with 5 USC 7119 and implementing regulations.

The Union argued that allowing for substantive counterproposals could be helpful in breaking the impasse log jam. The Agency argued that the parties should apply the law (i.e., 5 U.S.C. 7119). If the parties cannot reach agreement, the parties should keep moving the matter through the statutory negotiation process, not restart by submitting new proposals.

The amendment of proposals is addressed in Section #13, above. The procedures for requesting the assistance of FMCS are addressed in the FMCS regulations¹⁴. Under those procedures, either party can request assistance; it doesn't

¹⁴ 5 CFR 1425.2(b) - Parties engaging in mid-term or impact and/or implementation bargaining are encouraged to send a

have to be a joint request. Requiring a joint submission could frustrate the bargaining process and could result in a party filing a ULP complaint for failure to engage in good faith bargaining.

The Panel orders the parties to adopt the following language:

Either party may request assistance of Federal Mediation Conciliation Service (FMCS). If the parties are unable to reach agreement with assistance from the FMCS mediator, either party may request the assistance of the Federal Services Impasses Panel (FSIP) in accordance with 5 USC 7119 and implementing regulations.

22. Negotiability Issues.

Union - A. If there is a negotiability issue under Title 5, an appeal may be taken to the FLRA and subsequently to any appropriate court. Upon receipt of a decision on this issue, the matter will be placed on the bargaining table within 30 calendar days

B. If there is a negotiability issue under Title 38, section 7422, that issue may be referred to the Secretary of Veterans Affairs for a determination, and any subsequent appropriate court review. Upon receipt of a decision on this issue, the matter will be placed on the bargaining table within 30 calendar days

Agency – If the agency declares any proposal to be non-negotiable, the union may follow the procedures for resolving negotiability disputes set forth in 5 USC 7117. If any proposal declared non-negotiable is subsequently determined by the FLRA to be negotiable, or if the allegations of non-negotiability are withdrawn by the Department, the proposal will, upon the union's request be negotiated within 30 calendar days of receipt of a final action. If a matter is determined by the Secretary of Veterans Affairs to be negotiable under Title 38, section 7422, the matter will, upon the union's request, be negotiated within 30 calendar days of receipt of the Secretary's determination.

This disputes centers around what happens to a proposal deemed to be non-negotiable by the Agency. The Union has proposed that the provision, if determined to be negotiable, will automatically be returned to the bargaining table for negotiations within 30 days. The Agency acknowledged that a matter determined to be negotiable is

notice to FMCS if assistance is desired. Such notice may be sent by either party or may be submitted jointly.

subject to negotiations, but offers that the Union will need to "request" to reopen negotiations.

The negotiation of the matter is the Union's choice. It is reasonable for the Agency to want some kind of notification that the Union chooses to return to the bargaining table. The Union should provide a simple notice of their desire to return to the bargaining table over that outstanding matter.

The Panel orders the parties to adopt the following:

If the agency declares any proposal to be non-negotiable, the union may follow the procedures for resolving negotiability disputes set forth in 5 USC 7117. If any proposal declared non-negotiable is subsequently determined by the FLRA to be negotiable, or if the allegations of non-negotiability are withdrawn by the Department, the proposal will, upon the union's notification of interest to return to bargaining, be negotiated. If a matter is determined by the Secretary of Veterans Affairs to be negotiable under Title 38, section 7422, the matter will, upon the union's notification of interest to return to the bargaining, be negotiated. The Union must provide notice of their interest to return to the bargaining table within 10 calendar days of the notice of negotiability and the parties will return to the bargaining table as soon as possible, but no less than 30 calendar days of receipt of the negotiability notification.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute, the Federal Service Impasses Panel under § 2471.11(a) of its regulations hereby orders the parties to adopt the provisions as ordered above.

By direction of the Panel.



Mark Carter
Chairman

May 7, 2018
Washington, D.C.