

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

UNITED STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,  
INDIAN HEALTH SERVICE,  
CLAREMORE INDIAN HOSPITAL, CLAREMORE,  
OKLAHOMA

And

Case No. 19 FSIP 031

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3601

**DECISION AND ORDER**

This case, filed by the U.S. Department of Health and Human Services, Indian Health Service, Claremore Indian Hospital, Claremore, Oklahoma (Agency or Management) on March 29, 2019, concerns a dispute between it and the American Federation of Government Employees, Local 3601 (Union) over 4 articles in the parties' successor collective-bargaining agreement (CBA). This dispute was filed pursuant to §7119 of the Federal Service Labor-Management Relations Statute (the Statute). On May 22, 2019, the Federal Service Impasses Panel (Panel or FSIP) asserted jurisdiction over this dispute and directed it to be resolved in the manner discussed below.

**BARGAINING AND PROCEDURAL HISTORY**

The mission of the Agency is to provide inpatient services and outpatient care through nine organized clinical services. The Union represents approximately 350 employees in medical and non-medical positions. The parties are represented under a CBA that expired on March 1, 2019. The Union provided notice that it wished to renegotiate the CBA in May 2015, and the parties turned to bargaining ground rules. They executed ground rules in August 2015. However, the parties did not exchange proposals until early 2017, and then did not meet to bargain until June 2017.

From the outset, the parties' bargaining efforts were hindered due to their conflicting views of the ground rules that governed the negotiations of this contract. In this regard, Section 3.E of the agreement states:

Proposals for negotiation will be considered in numerical order, [and] either party may move to table a proposal, or any part of a proposal, but the tabling of a proposal will only be done by mutual consent of the parties. Any proposal, or part of a proposal, that is tabled will be brought from the table prior to the conclusion of the negotiations. Either party may move to bring a proposal, or part of a proposal, from the table; however, the bringing of a proposal, or part of a proposal will only be done by mutual consent while other proposals are still pending in numerical order. When all proposals have been initially addressed, all tabled proposals will again be addressed in numerical order.

The above language created friction due to the parties' approach to negotiations. The Agency wished to negotiate the parties' CBA article-by-article. By contrast, the Union offered a 39-article CBA in which the Union broke down each article section by section and treated each section as an individual proposal. The Union's approach resulted in nearly 900 proposals. The Union further insisted that the ground rules required the parties to bargain each proposal in numerical order, and it was unwilling to table most issues.

In November 2017, the Agency enlisted the services of the Federal Mediation and Conciliation Services (FMCS) for mediation assistance. In August and September 2018, and between bilateral negotiation sessions, the Agency unilaterally considered the majority of the Union's proposals and rejected them. The Union likewise rejected the majority of Management's proposals and refused to soften its view of the ground rules' alleged requirements. During the foregoing time period, the Union filed three grievances against Management alleging various unfair labor practices (ULPs).

On February 20, 2019, Mediator Thompson released the parties from mediation in Case No. 201810000073. He declined to declare the parties at impasse, but he also believed that no further movement could be made. The Agency subsequently filed its request for assistance nearly 6 weeks later on March 29, 2019. The Union objected to Panel jurisdiction due to the aforementioned grievances. Management disagreed with the Union's assertion.

On May 22, 2019, the Panel asserted jurisdiction over the Agency's request for assistance and directed the parties to submit all remaining disputed issues to FMCS, with a Mediator to be appointed by FMCS, for a period of 45 days following that appointment. The Panel further informed the parties that, should any issues remain unresolved following mediation, the parties would be required to submit Written Submissions on every remaining disputed Article along with their final offers within 10 days of being released from mediation. The submissions would be limited to 1 page per remaining disputed article.

FMCS appointed Mediators Cathy Hall and Thompson to this matter on May 24, 2019. As a result of FMCS's assistance, the parties were able to resolve 35 articles.

On July 18, 2019, Mediator Thompson referred this matter to the Panel on 4 remaining articles. In accordance with the Panel's May 22nd-Order, the parties submitted their Written Submissions to the Panel on July 29, 2019.

## **PRELIMINARY ISSUES**

In its post-Mediation submissions, and for all four remaining articles, the Union argues that the Panel should dismiss jurisdiction over this dispute for two reasons. Specifically, it claims: (1) this dispute is foreclosed due to multiple pending grievances; and (2) the Panel lacks a statutory quorum necessary to resolve this dispute. The Panel rejects both arguments.

### **1. Pending Grievances**

The Union argues that the Panel should decline jurisdiction over this dispute due to 3 pending grievances concerning the Agency's bargaining conduct during the parties' negotiations over their new contract. The Union raised this argument during the Panel's initial investigation, and the Panel rejected it when it asserted jurisdiction on May 22, 2019. Subsequent to that assertion of jurisdiction, however, one of the grievances resulted in an adverse arbitration decision against the Agency. And, it is this decision that the Union relies primarily upon to challenge the Panel's jurisdiction. This decision issued on June 7, 2019, and will briefly be discussed below.

The Arbitration Award arose because the Union filed a grievance against the Agency over an incident on November 21, 2017, during the course of successor CBA negotiations. Specifically, the parties believed they had reached "impasse" on one issue. Based on this belief, the Agency claimed all future scheduled negotiations were cancelled pending resolution of the impasse and refused to authorize the employees' release for any future negotiations. The Union filed a grievance in February 2018. The parties, however, eventually agreed to resume negotiations beginning March 6, 2018. The Union did not, however, withdraw its grievance, and the parties proceeded to arbitration in April 2019. Due to alleged unavailability, the Agency did not participate in the 1-day hearing.

Relying *solely* on the Union's representations and arguments, the Arbitrator sustained the Union's grievance. He concluded that the Agency's conduct relating to the November 21, 2017, incident constituted a ULP, and he ordered the Agency to "immediately schedule dates to resume contract negotiations under the terms" of the CBA, ground rules, and other statutory authority. The Union believes that this remedy requires the Panel to reverse its initial determination that the parties reached an impasse so that the parties may return to the bargaining table. By contrast, the Agency maintains that the parties *did* return to the table prior to the Arbitrator's award and

bargained to the point of impasse.<sup>1</sup> The parties, then, have already satisfied the terms of the Arbitrator's remedy.

The Union's argument is rejected. To begin with, the Arbitrator's Award is completely silent on the topic of the Panel's jurisdiction; indeed, there is no reference to the current Panel dispute whatsoever. It is, therefore, difficult to say that the Arbitrator's decision is somehow dispositive on the topic of whether the Panel should retain jurisdiction over this matter. Additionally, as the Agency notes, the parties agreed to resume negotiations in March 2018. The Union does not dispute this fact. Given that the parties did indeed resume negotiations after the November 27, 2017-incident that gave rise to the Union's grievance, it is difficult to say why they must now return to the bargaining table once again. In summation, there is no basis to conclude that the Arbitration Award should bar the processing of this dispute.<sup>2</sup>

## 2. Lack of Quorum

The **Union** argues that the Panel cannot issue any decision because it lacks a statutory quorum.<sup>3</sup> The **Agency** did not respond or otherwise request to do so.

The Panel denies the Union's argument. Other than a one-line challenge in its post-Panel ordered mediation submission, the Union offers no analysis in support of its claim. However, the Union's claim appears to be based upon the idea that the Panel lacks the statutory authority to take any action in the absence of a full quorum. In this regard, as noted above, the Panel asserted jurisdiction over this dispute and directed the parties to FMCS-assisted mediation on May 22, 2019. On this date, the Panel consisted of a Chairman and five other Panel Members. That is, the Panel had six total Members. Thus, the Union appears to be taking the position that the Panel lacked the statutory authority to take the foregoing action because, on the 22<sup>nd</sup>, the Panel lacked seven full Members. In order to assess the validity of the Union's contention, it is necessary to examine the plain statutory language involved.

Section 7119 of the Statute establishes the Federal Service Impasses Panel. 5 U.S.C. §7119(c)(2) states that the "Panel *shall be composed of a Chairman and at least six other members*, who shall be appointed by the President." (emphasis added). No part of §7119 (or any other portion of the Statute) discusses what actions the Panel may

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<sup>1</sup> The Agency made this argument in an email sent to the Panel and the Union dated June 11, 2019, in response to an inquiry from the Panel as to how it should address the Arbitrator's Award. The Union did not respond to the inquiry; indeed, it did not raise any issues about the Award until its July 29<sup>th</sup> Panel submission.

<sup>2</sup> The Union also argues that the Panel should decline jurisdiction because the parties did not meet for the "full" 45 days ordered by the Panel due to a 1-week unavailability by the Mediator. The Panel's Order did not state that the parties were required to bargain all 45 days.

<sup>3</sup> The entirety of the Union's argument is as follows: "The [P]anel does not have a quorum and should not insert [sic] may [sic] any decision until this is met."

take when confronted with a vacancy. The Statute, however, permits the promulgation of regulations to “carry out the provisions of [the Statute] applicable” to the Panel.<sup>4</sup> Under this framework, a regulation was enacted that defines a quorum, for purposes of §7119, as “a *majority* of the members of the Panel.” (emphasis added).

The foregoing framework demonstrates that Congress unambiguously determined that the Panel “shall” consist of a Chairman and “at least” six other Panel Members. But, Congress remained silent on the number of Members out of this number that are necessary to form a quorum or otherwise allow the Panel to act. Regulations enacted in accordance with the Statute fill that silence by providing a regulatory definition for what constitutes a quorum under the Panel’s framework. It is a simple majority. On May 22<sup>nd</sup>, the Panel consisted of six-Presidentially appointed Members. A majority of those Members voted to assert jurisdiction over this dispute and to direct the parties to FMCS-assisted mediation. The Panel’s action was entirely consistent with the statutory framework established by Congress. The Union’s jurisdictional challenge, therefore, is rejected.

## **PROPOSALS AND POSITION OF THE PARTIES**

Due to their length, the parties’ proposals will not be set forth in the body of this memo. Rather, they are attached to this document and will be referenced as appropriate.

### 1. Article 7 – Contract Duration and Termination

#### I. Agency Article and Position

The Agency’s article covers several topics: (1) duration; (2) termination of other existing agreements; (3) future potential conflicts; and (4) CBA renewal negotiations.

The Agency proposes a CBA duration of 7 years. It contemplates that negotiations over this contract have cost nearly \$300,000 for various reasons that are discussed below in greater detail. Accepting a duration period of shorter than 7 years, such as the Union’s proposed 4-year clause, would result in increased costs for the Agency in the long run when renegotiations arise.

Management also proposes language that would eliminate existing memorandums of understanding (MOUs), past practices, and other agreements unless those agreements have end dates past the execution of a successor CBA. Having a single document that references all existing agreements will reduce confusion for the Agency, the Union, and employees. Moreover, such an arrangement would benefit Management because it would eliminate redundant or conflicting agreements. For example, an existing MOU grants 38 hours of official time to the Union President. This MOU is a “backdoor” attempt to supplement the CBA’s requirement on official time.

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<sup>4</sup> 5 U.S.C. §7134.

Also enveloped within this topic is what to do with CBA language and surviving MOUs that come into conflict with law during the life of the successor CBA. Management's position is that such language and agreements would become invalid immediately.

## II. Union Article and Position

The Union proposes a duration period of 4 years. The "norm" in Federal sector collective bargaining is 3 years, so the Union's proposal is an attempt at compromise. The Union further proposes that existing agreements will not only continue but will also become a *part* of the successor agreement.

## III. Conclusion

### **The Panel will impose a modified version of Management's proposal.**

Although there are several sections within this article, the dispute may be broken down into two key topics: (1) duration; and (2) existing agreements.

#### i. Duration

Under the circumstances of this dispute, the Agency's proposal is most appropriate to impose. As part of its submission, the Agency provided a sworn declaration from a Human Resources Specialist within the Agency concerning costs associated with negotiations over the parties' successor CBA. In this regard, the Specialist offered the following information:

- From June 18, 2017 to February 2019, 10 total Agency employees (5 for each party) participated in negotiations over the successor CBA. The Agency's bargaining team accrued salary costs of \$99,832 for time spent at the table, whereas the Union's costs ran approximately \$41,371;
- From June 4, 2019 to July 17, 2019, 6 Agency bargaining-team members devoted nearly \$59,247 in salary costs to time devoted to Panel-ordered FMCS mediation. The Union's 5-member team resulted in a cost of approximately \$17,460; and
- Finally, for all of the above, the Agency spent roughly \$55,497 in travel costs for 3 individuals who were not located at the Agency's headquarters.

The Union provided no financial data of its own, thus, the Panel must look at the data which was provided by Management. That data does not paint a pretty picture. The figures total \$273,407 in taxpayer-funded dollars devoted *solely* to bargaining the parties' successor CBA. Although the right to collectively bargain over conditions of employment is one enshrined within the Statute, that right must be exercised in an effective and efficient manner. Requiring this figure (or something similar to it) to repeat every 7 years versus every 4 years demonstrates greater fiscal responsibility. Thus, the Agency's language in Article 7, Section 2 should be adopted in full.

ii. Existing Agreements

The heart of this dispute turns on whether the parties should continue to be bound to agreements that were executed during the life of the current master contract notwithstanding the fact the parties are bargaining a new one. In the Panel's view, the answer should be "no" because it would be more effective and efficient for the parties to be bound by a single agreement that lays out all the expectations and rights for interested parties to familiarize themselves with. Given that the size of the bargaining unit is a relatively small number (approximately 297), it is not clear what benefit would accrue from having a number of agreements covering a number of topics as opposed to one compact document for a compact unit. Thus, on balance, the Agency's overall proposal is the more appropriate one.

Despite the foregoing conclusion, several modifications are appropriate. To begin with, after proposing the elimination of other existing agreements, the Agency also proposes the following language in Article 7, Section 1.B.1:

All other items previously administered under the February 25, 2011 [CBA] will be administered in accordance with the applicable laws, Executive Orders, agency policies, and the Code of Federal Regulations (CFR), *negating the need for bargaining under 5 USC 7106(a) and 7106(b)*, if there are future changes in conditions of employment of the bargaining unit related to these items during the term of the Agreement. [emphasis added].

The emphasized language, essentially, grants the Agency authority to unilaterally deviate from existing "other items" if governing laws create a conflict. But, the Agency's language also clears Management of any obligation to bargain under the Statute. To be sure, there may be future scenarios where such an action is appropriate. But, the converse may also be true. Adopting the Agency's language, then, could potentially run afoul of the Union's statutory right to engage in collective bargaining. The emphasized language is bound up within the overall paragraph of the Agency's proposal. **The Panel, therefore, strikes the entirety of Management's Article 7, Section 1.B.1.**

The Agency also provides language concerning legal conflicts that arise for agreements that *do* continue after the CBA is executed and portions of the CBA that become inconsistent with law during the course of the agreement. For both scenarios, Management proposes that such agreements and language will become invalid. Again, these proposals call for the Panel to weigh in on future legal disputes that may or may not occur. **Accordingly, the Panel will strike Agency Article 7, Section 1.C and Section D.1.**

Finally, Management Article 7, Section 1.E.1.a sets forth a timeframe of the Agency Head Review process codified in Section 7114(c) of the Statute. This statutory section grants an agency 30 days from the date an agreement is "executed" to review it

and reject any portion due to legal conflicts.<sup>5</sup> Management's proposed language, however, states that agreements must be provided to the appropriate Agency review official "within five (5) calendar days of signature, otherwise the . . . review timeframe will commence once a signed copy is received by" the appropriate official. It is not clear how this proposed timeframe fits within the statutory timeframe envisioned for Agency Head Review. To that end, its arguable that Management's language could actually be an enlargement of the statutory timeframe. **In an excess of caution, the following proposed language will be stricken: "otherwise the AHR review timeframe will commence once a signed copy is received by the AHR authority."**

## 2. Article 8 – Mid-Term Bargaining

### I. Agency Article and Position

The purpose of the Agency's article is to limit those matters that may be bargained during the life of the CBA. And, the proposal does that by stating that "the terms of this Agreement shall remain unchanged during its entire term except as provided by Article [7], or as may be required by law." As to the latter point, Management offers language that defines those situations in which Management must bargain during the course of the agreement. Management Article 8, Section 2.A.1 permits the Agency to implement a change in conditions of employment and bargain post-implementation where "basic management rights are involved, and an operational need or other situation permitted by law requires the Agency to act without undue delay." Similarly, Article 8, Section 3.A sets forth the process for bargaining changes that are "greater than de minimis" which also "affect the bargaining unit." The Union must provide its proposals within a specific timeframe or "waive[ ]" its statutory right to bargain. Management's proposed language "fulfills the process" for bargaining under the Statute.

Management's language is the result of "contentious" negotiations over the successor CBA. The Agency accuses the Union of engaging in "stall tactics" to delay a bargaining process that began in July 2017. To this day, the Union is forcing the Agency to litigate several grievances related to the parties' bargaining process. In the interest of conserving Agency resources, then, the Union should not be permitted to further negotiations on matters covered by the successor CBA. Management is also opposed to Union language concerning the continuation of "privileges of [bargaining-unit employees] that exist by custom or tradition." Any variation to the foregoing could open Management up to countless disputes.

### II. Union Article and Position

The Union's proposal allows for negotiations to arise during the life of the successor agreement. Critically, it also prohibits Management from initiating a unilateral change in condition of employment unless such "changes [ ] are required by laws and Executive Orders."

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<sup>5</sup> See 5 U.S.C. §7114(c)(2) and (3).



The Union argues that its proposed language is "simple." It permits negotiations over "items or issues that arise outside of or was not included in the contract." The Union's proposals establish procedures that allow for a quick resolution of negotiations in order to lessen the impact on bargaining-unit employees.

### III. Conclusion

The Panel will impose a modified version of the Agency's proposal. On overall balance, the Panel believes that Management's proposal provides a more succinct and orderly process for matters pertaining to mid-term negotiations. Consequently, Management's language will better serve the needs of fulfilling the Agency's mission in an effective and efficient manner. Nevertheless, the Panel will make two changes to the Agency's language.

**First, the Panel will strike Management Article 8, Section 2.A,** which proposes as follows:

The Parties agree, as expressed in Article X (Contract Duration and Termination), that the terms of this Agreement shall remain unchanged during its entire term except as provided by Article X, or as may be required by law.

Management's proposed language seeks to limit the Union's ability to negotiate matters that arise during the course of the CBA. In short, the Agency is seeking to establish a "zipper clause." Management argues that the parties have devoted much in the way of resources to bargaining this new contract, so there should not be further negotiations over it. But, the Agency may always rely upon a "covered-by" argument in the event the Union attempts to bargain a matter addressed by the contract. Moreover, the Agency offered no data on how much resources are currently devoted to bargaining mid-term matters under the existing CBA. Finally, it is worth noting that the FLRA has taken no position on whether the topic of a zipper clause constitutes a mandatory or permissive topic of bargaining.<sup>6</sup> In the lack of clear guidance on this topic, as well as the Agency's lack of sufficient justification for this proposal, the Panel believes it is appropriate to strike the entirety of the above-quoted language.

**Second, the Panel further modifies Management Article 8, Section 3.A.** This language provides as follows:

The Agency will notify the Union of changes in conditions of employment that are more than de minimis and that affect the bargaining unit. The Union will have 10 days to submit a written request to bargain over the impact and implementation of the change. The request will contain all the written proposals which the Union wishes to negotiate. **If the Union fails to timely request bargaining, it waives its right under the Statute.**

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<sup>6</sup> See, e.g., *U.S. Dep't of the Interior and NFFE, Local 1309*, 56 FLRA 45, 54 (2000); see also *NTEU v. FLRA*, 399 F.3d 334, 342-43 (D.C. Cir. 2005).

Management will schedule bargaining within 30 days of receipt of the Union's written request. **This process fulfills the Union's right to bargain under 5 U.S.C. 7106(b)(2) and (3) concerning the procedures and appropriate arrangements for employees adversely affected by the exercise of a management right during the term of this Agreement.**

The two bolded sentences in the foregoing paragraph potentially define the Union's right to engage in collective bargaining under the Statute. The first such sentence explicitly mandates that the Union will "waive[ ]" its bargaining rights under the Statute were it not to meet the deadline of the proposal. Ample FLRA precedent demonstrates that an agency can rely upon the facts and circumstances of a particular situation to argue that a union has waived its right to bargain.<sup>7</sup> Whether the Agency can propose such language as a matter of course, however, is less certain. To avoid any potential legal disputes, the Panel will remove the first bolded sentence. The second bolded sentence should be stricken to avoid potentially similar issues. Management's proposed language states that its proposal "fulfills the Union's right to bargain" under the Statute. That is, the Agency is asking the Panel to impose language that arguably defines the contours of the Union's right to engage in mid-term negotiations. Again, it is unclear whether such language is legally permissible. Thus, the Panel believes this language should be jettisoned in an excess of caution.

Based on the above suggested changes, the Panel's imposed language for Article 8, Section 3.A will read as follows:

The Agency will notify the Union of changes in conditions of employment that are more than de minimis and that affect the bargaining unit. The Union will have 10 days to submit a written request to bargain over the impact and implementation of the change. The request will contain all the written proposals which the Union wishes to negotiate. Management will schedule bargaining within 30 days of receipt of the Union's written request.

3. Article 10 - Union Access to Employer Services

I. Agency Article and Position

The Agency will provide the Union with dedicated office space, but the Union will be required to pay a monthly rental fee. Additionally, although the Agency will provide certain furnishings, e.g., a telephone line, an email address, Management proposes that the Union must provide its own equipment, e.g., laptops, printers. This proposal will relieve Management of the "burden of audit accountability and internal security requirements." Management also proposes a number of other limitations on email and mail usage. Additionally, Management proposes prohibitions concerning the content of material that may be included on the Union's bulletin board located within the Agency's

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<sup>7</sup> See, e.g., *Headquarters, 127<sup>th</sup> Technical Fighter Wing, Michigan Air Nat'l Guard, Selfridge Air Nat'l Guard Base and AFGE, Local 2077*, 46 FLRA 582 (1992).

facility. The proposed rent requirement is no different from other interagency agreements for external parties that rely upon Agency resources. Additionally, the Union receives an estimated \$69,680 in dues annually. The only opposition offered by the Union during negotiations was that a different union at the Agency's facilities is currently not being charged rent. However, there is no legal requirement for the Agency to treat both unions equally with respect to rent.

## II. Union Article and Position

The Union's present office is only 97 square feet. The Indian Health Service (IHS), of which the Agency is a component, currently provides free office space to the "Union" in "numerous other locations." Additionally, IHS provides similar enmities to the Laborers International Union of North America (LIUNA) union located at other locations. There is no reason to treat the Union differently at this location. Indeed, this disparate treatment amounts to an unfair labor practice (ULP) under 5 U.S.C. §7116(a)(3) (discussed below in greater detail).

## III. Conclusion

The Panel will impose Management's proposal. On balance, we agree with Management that it is appropriate to treat the Union similar to other entities that may utilize Agency space and Agency resources, such as telephones, computers, etc. Additionally, by charging the Union rent, Management will recuperate operating costs, providing a benefit to Agency operations. Overall, then, the Agency's approach is the more sensible one.

The Union's primary opposition is that the "Union" and LIUNA have access to free office space at IHS facilities. By treating the Union differently, Management is violating 5 U.S.C. §7116(a)(3) the Union claims. This section makes it a ULP for an agency to:

sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status.

This language prohibits an agency from sponsoring any union with the exception of providing "customary and routine services and facilities." But, the agency must make sure such services and facilities are *also* provided to other labor organizations with an equivalent status. FLRA decisions addressing this provision typically involve topics such as granting a union access to a facility in order to canvass it for elections.<sup>8</sup> The Union did not provide any decision involving the topic of rent for office space. Indeed, other than citing §7116(a)(3), the Union provided no analysis whatsoever (nor has the Union claimed that it has actually *filed* a ULP charge on this basis).

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<sup>8</sup> See, e.g., *SSA and NTEU*, 52 F.L.R.A. 1159 (1997).

Additionally, the Union has provided little factual predicate to support its legal challenge. It alleges that IHS has provided free office space at locations throughout the country to LIUNA and the “Union.” To begin with, the Union’s bargaining relationship is with *the Agency*, not IHS. Further, the Union has provided no information regarding the number, locations, and contractual relationship of any LIUNA offices at IHS facilities. Finally, although the Union claims it has offices throughout IHS locations, the Union does not clarify whether it is referring to itself -- which would be unusual -- AFGE at the national level, or other AFGE locals. Accordingly, even if the Union’s legal theory is accurate, the Union provided little data in support thereof. Based on all the foregoing, it is appropriate to reject the Union’s legal challenge and accept Management’s language.

#### 4. Article 11 – Union Representatives/Official Time

##### I. Agency Article and Position

The key feature of the Agency’s proposal is to permit official time *only* for time granted under 5 U.S.C. §7131(a) and (c). The proposal does not authorize *any* official time in accordance with §7131(d), however. Indeed, Management’s language is altogether silent on this statutory provision. Dating to early 2017, the Union has used an exorbitant amount of official time in comparison to the size of the bargaining unit. Indeed, in the past year, the Union averaged 8.2 hours of official time *per bargaining-unit employee*. The Union’s devotion to official-time activities has negatively impacted the Agency’s ability to “meet[ ] the needs of the hospital.”

In addition to the foregoing, the Agency proposes requirements for employees to request official time and clear its use with supervisors. In particular, Management Article 11, Section 1.C and D establish a list of penalties that could arise if an employee abuses official time requests. The Panel imposed similar language in *U.S. Dep’t of Health and Human Services and NTEU*, 18 FSIP 077 at p.11 (April 2019) (*HHS*). As the Panel imposed such language previously, it should do so once again.

##### II. Union Article and Position

The Union proposes a mandatory block of official time hours totaling at least 70 hours per pay period. Forty hours shall go to the Union President and 30 shall be designated for the Local Union President (the Union does not explain the distinction between these positions). Additionally, the Union may make requests for reasonable amounts of official time above this amount, and Management will not deny such requests due to “arbitrary and capricious” reasons. The Statute grants official time to unions because it also requires unions to represent non-dues paying members. Accordingly, the Union’s requested amount of official time is appropriate.

##### III. Conclusion

The Panel will impose a modified version of Management’s proposal that imposes a bank of hours per year. The two key disputed issues in the parties’

proposals concern: (1) the amount of official time that will be permitted under the CBA; and (2) requests involving use of the same.

As to the first issue, the Agency concedes, as it must, that the Union is entitled to reasonable amounts of official time under 5 U.S.C. §7131(a) and (c).<sup>9</sup> The crux of this dispute turns on official time that is permitted under §7131(d) of the Statute. In *Social Security Administration and AFGE*, 19 FSIP 019 (May 2019) (SSA), the Panel acknowledged that 5 U.S.C. §7131(d) provides for official time in any amount parties agree to be “reasonable, necessary, and in the public interest.” However, the Panel also noted that it has authority to impose amounts when the parties cannot reach agreement. When imposing such decisions, the Panel clarified that it expects *all* parties to justify their proposed language on official time as “reasonable, necessary, and in the public interest.” In the absence of such justification, the Panel has authority to impose a different amount.

Since the issuance of SSA, President Trump’s May 25, 2018, Executive Orders that concern, among other topics, Federal-sector collective bargaining have gone into effect. These Orders provide an important source of public policy that the Panel will choose to implement. Notably, Section 2(j) of Executive Order, 13,387 “Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use” (Official Time Order or Order) indicates that the total number of hours that an employee engages in official time shall not exceed 1 hour per bargaining unit employee. Agreements that exceed this amount, then, should *not* be considered reasonable, necessary, and in the public interest as a matter of course. The Panel has the authority to award a greater amount of time. But, the party moving for such time has the burden described above to demonstrate that their requested time is reasonable, necessary, and in the public interest.

With this framework in place, the Panel turns to weighing the parties’ arguments. Although not clear, Management appears to contend that the absence of language concerning §7131(d) in its proposal is warranted due to the Union’s overuse of official time within the past several years. To support this position, Management submitted a sworn statement from an Agency Human Resources Specialist who reviewed Agency and Union-submitted reports on official time. After reviewing such data, the Specialist found as follows:

- The Union President used 995.75 hours of official time between January 3, 2017, and December 29, 2017;
- Between January 2, 2018, and July 31, 2018, the Union President reported 687.75 hours; and

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<sup>9</sup> These sections grant official time for matters relating to collective bargaining and FLRA-related proceedings, respectively.

- The Union reported using 2428.75 hours of official time between July 2018 and July 2019.

With respect to the third bullet point, the Agency notes that the bargaining unit had approximately 297 bargaining-unit employees during this time period. As a result, on average, the Union devoted roughly 8.2 hours of official time per employee. The Union is requesting a bank of 70 hours per *pay period*, which translates to about 6.13 hours of official time per employee. Both of these hourly figures are excessive, the Agency contends, due to the size of the unit. The Panel is inclined to agree with the Agency's assertion. In this regard, the Union offered no data and very little in the way of argument to support its proposed bank, particularly in light of the relatively small size of the unit. And, a review of the record provided by the Union provides little in the way of supporting information. As stated above, a party requesting an appropriate amount of time bears a burden of demonstrating the need for said time. The Union's conclusory assertions do not meet this standard. The only other argument offered by the Union is its claim that its proposed time is warranted because it must represent non-dues paying bargaining-unit members. Although the Union's claim is accurate, it does not account for the fact that, as a matter of law, Congress concluded that other non-guarantees of official time must still be "reasonable, necessary, and in the public interest." The Union's argument, therefore, is unavailing.

Based on the above, it would be inappropriate to grant the Union its requested bank of hours for official time under 5 U.S.C. §7131(d). But, the Agency's unwillingness to include language on this section within the parties' CBA must also be addressed. As already noted, Management fails to specifically address the fact that its proposal omits any reference to §7131(d); that is, Management offers no argument as to why the parties' CBA should remain silent on official time that arises pursuant to this statutory provision. To be certain, the Agency does offer official-time figures that are eye-raising in light of the size of the bargaining unit and the lack of supporting data offered by the Union. But, Management offers no breakdown for how much of its cited data for Union-used official time constitutes time under §7131(d). On balance, then, the Panel has a difficult time concluding that the Agency's position omitting *any* official time pursuant to this section is a defensible one.

Neither party has suitably justified their position. As discussed already, the Panel believes that the Official Time Order provides important direction to the resolution of issues involving official time. Given the lack of persuasive arguments in this dispute, we believe it is appropriate to apply that direction to this dispute and impose language that would permit no more than 1 hour of official time per bargaining-unit employee per year for *all* official time usage. This conclusion is buttressed further by the unchallenged data provided by Management concerning recent official-time usage by the Union. Given the size of the bargaining unit, it is difficult to justify the continuation of an environment in which the Union is using over 8 hours per bargaining-unit employee in a single year. Applying those figures to this unit would result in an annual expenditure of nearly 2,400 hours of official time. That is hardly reasonable, necessary, and in the

public interest. Accordingly, the Management will impose the following modified language in the Agency's Section 2 (new language in bold):

In accordance with 5 U.S.C. Section 7131 of the FSLMRS, Union Officers and Representatives (not to exceed the number of individuals designated as representing the Employer for such purposes) will receive reasonable amounts of official time within the scope of the FSLMRS **not to exceed more than 1 hour per bargaining-unit employee per year for:**

A. Negotiations of collective bargaining agreements and attendance at impasse proceedings (excluding travel and preparation time) under 5 U.S.C. Section 7131 (a) of the FSLMRS.

B. Participation in any phase of a Federal Labor Relations Authority (FLRA) proceeding, for which official time is ordered by the FLRA under Section 7131 (c) of the FSLMRS.

C. Any other matter arising under the FSLMRS as described by Section 7131(d) of the FSLMRS.

**Nothing in the language set forth above shall constitute a waiver of either party's rights arising under the FSLMRS.**

Finally, the only other issue in this article specifically addressed by the Agency in its Panel submission is its language in Management's Section 1.C concerning discipline for official-time abuse. The Agency believes this language is necessary to curb the potential misuse of official time. The Union does not address the section. Accordingly, it is appropriate to accept Management's language and impose it within the parties' agreement.

**ORDER**

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



Mark A. Carter  
FSIP Chairman

November 18, 2019  
Washington, D.C.

15629745.1

## ARTICLE 7- CONTRACT DURATION AND TERMINATION

### SECTION 1

A. The Employer and the Union agree that for the full term of the Agreement (as set forth in Section 2 and, as may be applicable, in Section 3 of this Article) the provisions of this Agreement shall remain in full force and effect and unchanged except as mutually agreed, or as may be required by applicable law.

B. This Agreement supersedes and replaces any and all previous agreements, understandings (whether written or oral) and supplements between the Parties made under the auspice of a previous collective bargaining agreement (CBA) to include midterm bargaining, memoranda of understanding/agreement based on such bargaining, etc.

1. All other items previously administered under the February 25, 2011 Agreement will be administered in accordance with the applicable laws, Executive Orders, agency policies, and the Code of Federal Regulations (CFR), negating the need for bargaining under 5 USC 7106(a) and 7106(b), if there are future changes in conditions of employment of the bargaining unit related to these items during the term of the Agreement.

2. All past practices which concern mandatory subjects of bargaining are considered superseded with implementation of this Agreement.

C. Provisions of this Agreement that are or become inconsistent with the law, government wide rule, executive order/memoranda, regulation, etc., will be severed and compliance with the law, rule, order, or regulation will take effect upon notification to the Union.

D. Any existing past practices, oral understanding, or provisions of written memoranda of understanding (MOU) or agreement (MOA) existing at the time this Agreement comes into effect, not otherwise identified and merged into this Agreement, or inconsistent with this Agreement, law, or government wide rule, executive order/memoranda, or regulation, are superseded by this Agreement.

1. Where such MOUs/MOAs have a specific term or duration extending beyond the effective/expiration date of this Agreement, and where such MOUs/MOAs are not inconsistent with this Agreement, or inconsistent with law, government wide rule, executive order/memoranda, or regulation, they shall continue in effect until the MOU/MOA expiration date.



2. If no term or duration is specified in the MOU/MOA, the MOU/MOA expires upon completion of the event or no later than 12 months after the MOU/MOA was executed.

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

1. Agreements negotiated under the terms of this Agreement must undergo Agency Head Review (AHR) requirements of 5 U.S.C. 7114(c).

a. MOUs/MOAs must be provided to the AHR authority within five (5) calendar days of signature, otherwise the AHR review timeframe will commence once a signed copy is received by the AHR authority.

## SECTION 2

This Agreement shall remain in effect for seven (7) years from the effective date shown on the first page of the Agreement.

## SECTION 3

A. This Agreement shall be automatically renewed from year to year thereafter unless one Party gives the other written notice of its intention to renegotiate this Agreement no less than sixty (60) or more than ninety (90) calendar days prior to its expiration date. If notice to renegotiate is given, the Agreement shall be extended for one (1) year or until a new agreement becomes effective, whichever is earlier.

B. Before the Agreement is extended, it must be reviewed by the Agency to ensure it conforms to the law, Government-wide rules, executive order/memoranda, or regulations.

## SECTION 4

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

A. The Parties will meet within thirty (30) calendar days after notice to renegotiate is given to begin ground rules negotiations. If the Parties agree, ground rules negotiations may be bypassed and the Parties may move directly into substantive negotiations. In the event the Parties elect to enter into ground rules negotiations, the parties will exchange ground rules proposals which must include a reasonable substantive negotiation schedule, no later than ten (10) workdays prior to the date

negotiations are scheduled to begin. Two weeks of ground rules negotiations will be scheduled to occur during a four week period (that is, two one week bargaining sessions, each with one week break in between), beginning at 9:00AM and concluding at 5:30PM, with a one half hour lunch break. If agreement is not reached by the end of the four weeks of bargaining, the parties will jointly request mediation within three (3) workdays of the conclusion of the last bargaining session.

B. Ground rules negotiation shall be held at the Claremore Indian Hospital, Claremore, OK. Each party shall be represented by up to four (4) persons, including the Chief Negotiator who will have collective bargaining authority. Each party will be responsible for its own travel and per diem.

C. The Employer will make a room available for negotiations and caucuses.

#### SECTION 5

All discussions between the Union and the Employer regarding the subject matter contemplated in this Agreement must occur with at least one individual from each party being present, in person, at the Claremore Indian Hospital, Claremore, OK. Teleconference, other electronic means of communicating, is permitted for additional team members.

#### SECTION 6

In the event of any inconsistency or conflict between this Article X and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control.

## ARTICLE 8 - MID-TERM BARGAINING

### SECTION 1

This Article governs the mid-term bargaining relationship of the Parties over matters which are not covered by this Agreement. The Parties agree that the purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite mid-term negotiations in the interest of the Agency and its employees.

### SECTION 2

A. The Parties agree, as expressed in Article X (Contract Duration and Termination), that the terms of this Agreement shall remain unchanged during its entire term except as provided by Article X, or as may be required by law.

1. The Parties recognize that operational need, or other situations (i.e. exigencies) permitted by law, may mandate that a change be implemented before bargaining concerning the matter is concluded where an obligation to notify the Union and bargain upon request, exists. Where basic management rights are involved, and an operational need or other situation permitted by law requires the Agency to act without undue delay, the Agency may implement the proposed change and any required impact negotiations will occur or continue on a post-implementation basis.

B. Mid-term agreements negotiated under the terms of this Agreement, must undergo Agency Head Review (AHR) requirements of 5 U.S.C. 7114(c). Mid-Term agreements reached under this Article, must be provided to the AHR authority within five (5) calendar days of signature for AHR.

### SECTION 3

A. The Agency will notify the Union of changes in conditions of employment that are more than de minimis and that affect the bargaining unit. The Union will have 10 days to submit a written request to bargain over the impact and implementation of the change. The request will contain all the written proposals which the Union wishes to negotiate. If the Union fails to timely request bargaining, it waives its right under the Statute. Management will schedule bargaining within 30 days of receipt of the Union's written request. This process fulfills the Union's right to bargain under 5 U.S.C. 7106(b)(2) and (3) concerning procedures and appropriate arrangements for employees adversely affected by the exercise of a management right during the term of this Agreement.

**B. The Parties agree that no other mid-term bargaining rights exist.**

## ARTICLE 10 – UNION ACCESS TO EMPLOYER SERVICES

### SECTION 1

A. As a responsible steward of the American Taxpayer, the Parties recognize the need to utilize space in a manner consistent with space saving initiatives aligned with Employer and other Federal initiatives to reduce office footprints and fiscal impacts.

B. As such, the Employer agrees to provide the Union dedicated private office space for the designated recognized entity, AFGE, for the conduct of official business. This space shall be provided in the Claremore Indian Hospital, Claremore, OK, and will not be the regularly assigned office for any individual. Under no circumstances will Union office space be required to exceed 200 square feet. Use of this space will be subject to paragraph C below. The Employer agrees to provide Room 621 as a secured area allocated for the Union office. The Union will be afforded twenty-four (24) hours per day/seven (7) days per week access to this Union office area.

C. The Union agrees to pay the Standard Level User Charge (SLUC) for the use of space in paragraph B above as determined by the Agency. The rental amount will be calculated to include a reasonable estimate of the cost of furnishings and other Agency resources provided for use by the Union pursuant to this Article. The Agency will provide to the Union the cost of any space permitted for Union use for the upcoming fiscal year prior to the beginning of the fiscal year, or any portion thereof where a full fiscal year is not available. The Union agrees to remit to the Agency the cost of such space at least 30 calendar days prior to the beginning of the new fiscal year or when otherwise due, if it desires to rent or continue renting the space for the upcoming fiscal year. The Union agrees to pay such rent when due or immediately cede access to the space. Charges will be assessed and paid before the union occupies any dedicated private space. Use of space only intermittently will not impact the rental cost of any space by the Union.

D. The Employer agrees to provide access to conference room space reservations for the conduct of representational duties for appointed AFGE representatives subject to availability. These space reservations are to be used for Union meetings with employees, to include during employees' non-duty status. Union Representatives will be responsible for scheduling and cancelling space as needed and failure to adhere to cancellation protocols could result in denial of future reservations. The Agency will provide cancellation protocols on use of conference

rooms. The Union may announce meetings/activities over the PA system provided the announcements are in compliance with current facility policy.

E. All union office space is subject to audit requirements and other internal security requirements as any other Department space is. Agency officials will not be denied entry to the space.

F. The Employer agrees that, where available, the Union may have access to the use of Video Teleconferencing and Computer Training Rooms for Union Sponsored Training, as approved by the Employer. The Union will have the same access as other groups.

## SECTION 2

The Union shall be responsible for furnishing its own equipment (laptops, mobile devices, printers, etc.) as to relieve any burden of audit accountability and internal security requirements by the Employer. The Union will be provided Wi-Fi access by the Employer, where available.

## SECTION 3

A. Union representatives shall be provided a telephone by the Employer along with the Employer's internal mail system when necessary for conducting labor-management activities not inclusive of internal union business. Consistent with postal and Departmental regulations, the Union shall have use of Employer metered mail limited to labor relations representational matters but not including matters relating to internal Union business. This, however, does not permit the Union representative to use other types of mailing such as express, overnight, registered, certified mail, etc.

1. Official publications of the Union, which may include newsletters, fliers, or other notices, may be distributed on Employer property by Union representatives during non-duty time.

2. Where available, Union representatives will use centralized employee mail slots/drops to distribute Union publications. Distribution shall be accomplished so as not to disrupt operations. All such materials shall be properly identified as official Union issuances.

B. The Employer agrees to provide public area access to copying machines for representational business. Use of copiers shall be reasonable and shall not substantially interfere with conduct of official business. The Union will use private

sector sources when twenty (20) or more copies of a single document are required. The Union will assume responsibility for arranging those services and related costs.

C. The Employer will provide the Union with access to an email address. The Union is subject to the same standards that apply to all users as established by Departmental policy, to include cybersecurity training requirements, machine audits for units using Department systems, etc. Non-Agency employees will not receive internal Agency email addresses.

D. Where available, the Employer agrees to provide the Union physical space for official Union materials on public bulletin boards. The Union will maintain five (5) bulletin boards in the Claremore Indian Hospital for utilization of postings of Union business.

1. The Union is responsible for the content of all Union materials posted or distributed.

a. Union postings will be maintained in an orderly condition.

b. Posted material shall be pertinent to the conduct of workplace business and not related to partisan political matters.

c. Posted and distributed Union materials shall not malign or negatively refer to specific managers or individuals.

E. The Employer agrees to make the contract available via the Claremore Indian Hospital web page to all CIH employees. Employees who want to obtain a hard copy of the collective bargaining agreement are responsible for printing outside of the facility.

#### SECTION 4

A. Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business), the recording (audio, visual, or any other form) while conducting Union business in the capacity of an exclusive representative (on or off premises) is prohibited.

#### SECTION 5

In the event of any inconsistency or conflict between this Article and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control.

## ARTICLE 11- UNION REPRESENTATIVES / OFFICIAL TIME

### SECTION 1

A. This Article provides an equitable process for the allocation and approval of official time for representational activities as negotiated pursuant to the Federal Service Labor-Management Relations Statute (FSMLRS or Statute), and shall be administered in accordance with said Statute and this Agreement.

B. This Article respects the Statute's goals of promoting collective bargaining while honoring the Statute's requirement that its provisions be interpreted to promote an effective and efficient government. The Agency and the Union share the responsibility to ensure that any official time used for representational activities:

1. Is authorized prior to use;
2. Is used appropriately, in accordance with the Statute and this Article; and,
3. That appropriate recordkeeping mechanisms are utilized for tracking and recording all time by all union representatives for performing representational activities during the term of the Agreement as described in this Article.

C. In the interest of effective and efficient government as stewards of the American Taxpayer, abuse of any official time used for union representational matters, to include failure to timely and accurately report the time used, will not be tolerated and may result in administrative action against the union officer or representative at the Employer's discretion and will be procedurally addressed as follows:

1. First offense = The AFGE President is notified and the Union representative receives a warning;
2. Second offense = The AFGE President is notified and the Union representative is prohibited from using official time for representational activities for thirty (30) calendar days; and
3. Third offense= The AFGE President is notified and the Union representative is prohibited from using official time for representational activities for the remainder of the duration of the Agreement.

D. Taking an administrative action as defined above does not prohibit the agency from affecting discipline or adverse action as appropriate.

### SECTION 2



In accordance with 5 U.S.C. Section 7131 of the FSLMRS, Union Officers and Representatives (not to exceed the number of individuals designated as representing the Employer for such purposes) will receive reasonable amounts of official time within the scope of the FSLMRS for:

A. Negotiations of collective bargaining agreements and attendance at impasse proceedings (excluding travel and preparation time) under 5 U.S.C. Section 7131 (a) of the FSLMRS.

B. Participation in any phase of a Federal Labor Relations Authority (FLRA) proceeding, for which official time is ordered by the FLRA under Section 7131 (c) of the FSLMRS.

### SECTION 3

Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on official time, including the solicitation of membership, elections of labor organization officials, and collection of dues. These activities must only be performed while in a non-- duty status, i.e., leave without pay (LWOP) or annual leave.

### SECTION 4

A. The AFGE President will provide the Employer, or designee, written notification of the name, union position, duty station, telephone number, organizational unit, and immediate supervisor of each Union representative within ten (10) workdays of the effective date of this Agreement so that appropriate discussions can be held with these supervisors and managers.

### SECTION 5

A. Union representatives are required to stagger their use of authorized and approved official time over the course of the fiscal year. Union representatives will work out official time usage for official representational purposes consistent with this Agreement with their supervisors to accommodate both union representational activities and Agency assigned duties.

B. BUE(s) and Union Representative may meet briefly, e.g., up to 1-3 minutes, without official time being requested, as long as contacts are incidental and infrequent, interfere with patient care and occurs outside the department. When a BUE requests Union representation, the Union Representative will complete the

HHS Official Time designated form(s) for Official Time if the meeting will last longer than 3 minutes.

1. Perceived problems with brief meetings will be brought to the attention of a Union Official and a management official. No Union business will be conducted within the departments.
2. The Union will guard against the Abuse of Brief Meetings.

## SECTION 6

A. Union representatives will be permitted to leave their assigned work area on official time, as appropriate, as authorized under and subject to this Agreement, including the limitations on pay and official time, after:

1. Providing written notification via HHS Official Time designated form(s) for Official Time to their immediate supervisor or appropriate Management Official;
2. Providing a good-faith estimate of the amount of time for which release is requested;
3. Indicating the destination; if any.
4. Specifying the appropriate representational category.

B. If there is more than one (1) Union representative reporting to the same supervisor, the parties agree to work closely and constructively to reduce the impact of multiple representatives on performance of the work of the unit. Management may initiate a reassignment if management determines that the impact on the work unit is not satisfactorily resolved.

C. A Union representative shall, to the extent possible, schedule his/her known in advance absences so as not to compromise important work assignments, impede work, or interfere with the effective, efficient, and timely accomplishment of the Agency's mission. The supervisor shall, to the extent possible, schedule assignments, and inform Union representatives of assignments, in advance in order to reduce the likelihood of conflicting demands. The time spent in carrying out the representational duties described in this Article may require some adjustment of a representative's workload if, in the judgment of the Employer, an adjustment is necessary and practicable.

D. Union representatives will be permitted to leave their assigned work area on official time as authorized under this agreement only after reporting to their immediate supervisor or appropriate management official and identifying the purpose of their activity. If the representative cannot be released at the time of the request and the amount of time the parties agree to, is reasonable, the representative and the supervisor will arrive at a mutually agreeable time for departure. The Union representative will be given a brief amount of time to inform any bargaining unit employees involved in the delay.

E. If management is unable to approve a request for official time, management will, within one workday, identify an alternate time for use of the requested official time.

F. Upon entering any work area to meet with an employee, the representative will advise the immediate supervisor of his or her presence, the employee to be contacted, and the estimated duration of the meeting. For privacy concerns, the employee and Union representative will be allowed to meet in a location away from that employee's department.

G. On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, both will contact their supervisors telephonically or by e-mail to notify them of the need to extend the anticipated return time and the amount of additional time needed. The supervisor (of the employee and union representative) will determine if the time can be extended for each individual or if rescheduling is necessary due to work requirements.

H. When the Union representative needs to leave the work site and his or her supervisor is temporarily absent from the site, the representative will request release from another supervisor or manager in the chain of command or designee prior to leaving the work site.

## SECTION 7

A. Each Union representative shall timely submit to his/her supervisor a biweekly written report of the amount of official time that he/she has spent on Union activities covered by this Article through the Employer's time and attendance system, and shall provide an amended report if official time is used after submission of their time and attendance through the Employer's system.

## SECTION 8

In the event of any inconsistency or conflict between this Article and any other Article contained in this Agreement, the terms, conditions and provisions of this Article shall govern and control.



## **ARTICLE 7- CONTRACT DURATION AND TERMINATION**

### **SECTION 1**

**A. The Employer and the Union agree that for the full term of the Agreement (as set forth in Section 2 and, as may be applicable, in Section 8 of this Article) the provisions of this Agreement shall remain in full force and effect and unchanged except as mutually agreed., or as may be required by applicable law.**

**D. Any existing past practices, oral understanding, or provisions of written memoranda of understanding (MOU) or agreement (MOA) existing at the time this Agreement comes into effect are encompassed and become part of this agreement, not otherwise identified and merged into this Agreement, or inconsistent with this Agreement, law, or government wide rule, or regulation, are superseded by this Agreement.**

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

### **SECTION 2**

**This Agreement shall remain in effect for four (4) years from the effective date shown on the first page of the Agreement.**

### **SECTION 3**

**A. This Agreement shall be automatically renewed from year to year thereafter unless one Party gives the other written notice of its intention to renegotiate this Agreement no less than sixty (60) or more than ninety (90) calendar days prior to its expiration date. If notice to renegotiate is given, the Agreement shall be extended for one (1) year or until a new agreement becomes effective**

### **SECTION 4**

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

**A. The Parties will meet within thirty (30) calendar days after notice to renegotiate is given to begin ground rules negotiations. If the Parties agree, ground rules negotiations may be bypassed and the Parties may move directly into substantive negotiations. In the event the Parties elect to enter into ground rules negotiations, the parties will exchange ground rules proposals which must include a reasonable**

substantive negotiation schedule, no later than ten (10) workdays prior to the date negotiations are scheduled to begin. Two weeks of ground rules negotiations will be scheduled to occur during a four week period (that is, two one week bargaining sessions, each with one week break in between), beginning at 9:00AM and concluding at 5:30PM, with a one half hour lunch break. If agreement is not reached by the end of the four weeks of bargaining, the parties will jointly request mediation within three (3) workdays of the conclusion of the last bargaining session.

B. Ground rules negotiation shall be held at the Claremore Indian Hospital, Claremore, OK. Each party shall be represented by up to four (4) persons, including the Chief Negotiator who will have collective bargaining authority. Each party will be responsible for its own travel and per diem.

C. The Employer will make a room and equipment available for negotiations and caucuses.

## SECTION 5

All discussions between the Union and the Employer regarding the subject matter contemplated in this Agreement must occur with at least one individual from each party being present, in person, at the Claremore Indian Hospital, Claremore, OK.

## **ARTICLE 8 MID- TERM BARGAINING**

**8.1** The Employer agrees not to establish or change any condition of employment unilaterally which terminates, or directly conflicts with a specific term or condition of this Agreement, except changes which are required by laws and Executive Orders.

**8.2** The Employer recognizes the Union's right to request negotiations on procedures which the Employer will observe in exercising its retained Management rights (Article 4) when such action by the Employer will have an impact on BUE(s) pursuant to 7106(b)(2) and (3) of the Civil Service Reform Act and Executive Orders. The parties recognize situations permitted by law, may mandate that a change be implemented before bargaining concerning the matter is concluded where an obligation to notify the Union and bargain upon request, exists. Where basic management rights are involved, or other situation permitted by law requires the agency to act without delay, the Agency may implement the proposed change and any required impact negotiations will occur or continue on a post implementation basis.

Matters appropriate for mid-term bargaining shall include those issues within the scope of bargaining, as proposed by either Party which are either newly formulated, or changes to established personnel policies and practices during the term of this agreement, which effect the working conditions of unit employees.

**8.3** When either party proposes to establish or change a condition of employment which will have an impact on BUE(s), the initiating party will adhere to the procedures outlined below in section B. The initiating party will submit all necessary information on a change to permit full and proper discussion, this notice may include the following:

### **A. Notice**

1. the nature and scope of the proposed change, 2. an explanation of the initiating party's plans for implementing this change, 3. an explanation of why the proposed change is necessary, and 4. the proposed implementation date.

### **B. Changes applicable to the Bargaining Unit:**

1. A notice, both verbal and written, will be submitted to the receiving party as far in advance as possible of a proposed change. After the briefing by the agency to the Union and provided a written notification, the union will have 30 days in which to request an opportunity to negotiate. When negotiations are invoked, then the parties shall commence negotiations within ten (10) working days. If the initiating party delays or decides not to implement the proposed change, written notification will be provided. Timeframes may be extended by written mutual agreement, (i.e., conditions when official time cannot be granted).

2. The parties agree that any proposals submitted in the context of Impact or Implementation or other mid-term bargaining will be specifically related to the proposed change(s) and will not deal with extraneous matters.



3. The parties agree that reasonable extensions of time under this section may be made for good cause provided that the total time involved does not cause an unreasonable delay or impede the Employer in the exercise of its management rights.

8.4 Those privileges of BUE(s) which by custom, tradition, and known existing practice have become an integral part of their working conditions, shall not be abridged as a result of not being enumerated in this Agreement.

8.5 It is the right of either Party to initiate bargaining on those issues not covered by this Agreement at any time during the life of the Agreement. Prior to implementing changes, bargaining will occur to the full extent of law and Article 8. It is further agreed that issues covered by the contract can only be re-negotiated by mutual agreement.

8.6 Mid term agreements negotiated under the terms of this agreement, must undergo Agency Head Review (AHR) requirements of 5 U.S.C. 7114(c). Mid-Term agreements reached under this article, must be provided to the (AHR) within ten (10) calendar days of signature for AHR.

## **ARTICLE 10 – UNION ACCESS TO EMPLOYER SERVICES**

### **SECTION 1**

#### **Union Offices**

a. The Employer agrees to maintain the status quo regarding any offices that the Union has been provided including any furniture and equipment. For those Service Unit/Headquarters locations that a union office does not exist, the Employer agrees to provide reasonable office space for a Union office. The type and location of the office space are subject to local bargaining.

Minimum Union requirements for adequate workspace include but are not limited to; at least one desk and table, a working telephone, facsimile, at least two chairs, locking file cabinet; and, at least one computer and printer that is compatible with current IHS systems and has access to the IHS intranet and internet.

b. The Union office space, including equipment, shall be for the sole use of the Union, and will be private and secure to ensure confidentiality of records and conversations.

c. The Union may designate specific individuals to staff the Union office on a regular basis and will provide a schedule of such staffing to the local management upon request. Official time will be in accordance with the official time section of Article 2 of this Agreement. Union representatives shall have access to Union offices during the same times the facility is open to staff.

d. All such usage stated above shall be without charge to the Union and will be in accordance with the Employer's regulatory requirements and the Union's representational purposes as prescribed by law. This section will be implemented within 60 days following the signing of this agreement.

D. The Employer agrees to provide access to conference room space reservations for the conduct of representational duties for appointed AFGE representatives subject to availability. These space reservations are to be used for Union meetings with employees, to include during employees' non-duty status. Union Representatives will be responsible for scheduling and cancelling space as needed and failure to adhere to cancellation protocols could result in denial of future reservations. The Agency will provide cancellation protocols on use of conference rooms. The Union may announce meetings/activities over the PA system provided the announcements are in compliance with current facility policy.

E. All union office space is subject to audit requirements and other internal security requirements as any other Department space is, and when needed, Agency officials will not be denied entry to the space.

F. The Employer agrees that, where available, the Union may have access to the use of Video Teleconferencing and Computer Training Rooms for Union Sponsored

Training, as approved by the Employer. The Union will have the same access as other groups.

## SECTION 2

The Union shall be responsible for furnishing its own equipment (laptops, mobile devices, printers, etc.) as to relieve any burden of audit accountability and internal security requirements by the Employer. The Agency will provide the Union one agency computer for internal secured data. The Union will be provided Wi-Fi access by the Employer, where available.

## SECTION 3

A. Consistent with postal and Departmental regulations, the Union shall have use of Employer metered mail limited to labor relations representational matters but not including matters relating to internal Union business. This, however, does not permit the Union representative to use other types of mailing such as express, overnight, registered, certified mail, etc.

1. Official publications of the Union, which may include newsletters, fliers, or other notices, may be distributed on Employer property by Union representatives during non-duty time.

2. Where available, Union representatives will use centralized employee mail slots/drops to distribute Union publications. Distribution shall be accomplished so as not to disrupt operations. All such materials shall be properly identified as official Union issuances.

B. The Employer agrees to provide public area access to copying machines for representational business. Use of copiers shall be reasonable and shall not substantially interfere with conduct of official business. The Union will use private sector sources when twenty (20) or more copies of a single document are required. The Union will assume responsibility for arranging those services and related costs.

The Employer agrees to give copies to the Union and employees, personnel publications including, regulations, supplements and classification standards maintained by the employer and not available via the internet upon request by the Union and/or the employee. The Employer will provide the Union with access to an email address. The Union is subject to the same standards that apply to all users as established by Departmental policy, to include cybersecurity training requirements, machine audits for units using Department systems, etc. Non-Agency employees will not receive internal Agency email addresses.

D. Where available, the Employer agrees to provide the Union physical space for official Union materials on public bulletin boards. The Union will maintain five (5) bulletin boards in the Claremore Indian Hospital for utilization of postings of Union business.

1. The Union is responsible for the content of all Union materials posted or distributed.

a. Union postings will be maintained in an orderly condition.

b. Posted material shall be pertinent to the conduct of workplace business and not related to partisan political matters.

c. Posted and distributed Union materials shall not malign or negatively refer to specific managers or individuals.

E. The Employer agrees to make the contract available via the Claremore Indian Hospital web page to all CIH employees. Employees who want to obtain a hard copy of the collective bargaining agreement will be allowed to print at work.

#### SECTION 4

A. Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business), the recording (audio, visual, or any other form) while conducting Union business in the capacity of an exclusive representative (on or off premises) is prohibited.

The employer agrees to furnish the Union a current and accurate list of all bargaining unit employees within the bargaining unit ordered by Full Name, Dept., ID, Job Title, Pay Plan, Occupational Series, Grade, Step, FLSA status, Bargaining Unit Code, Service Date, Full Time/Part Time Status, Location Code, Location Description, and POI; on a quarterly basis (quarters ending 3/31, 6/30, 9/30, 12/31 of each calendar year. Such list will be provided to the Union President or designee. This does not preclude nor substitute for other Union requests for Bargaining Unit listings to meet other representational needs.

## ARTICLE 11 OFFICIAL TIME

### SECTION 1

A. This Article provides an equitable process for the allocation and approval of official time for representational activities as negotiated pursuant to the Federal Service Labor-Management Relations Statute (FSMLRS or Statute), and shall be administered in accordance with said Statute and this Agreement.

B. This Article respects the Statute's goals of promoting collective bargaining while honoring the Statute's requirement that its provisions be interpreted to promote an effective and efficient government. The Agency and the Union share the responsibility to ensure that any official time used for representational activities:

1. Is authorized prior to use;
2. Is used appropriately, in accordance with the Statute and this Article; and,
3. That appropriate recordkeeping mechanisms are utilized for tracking and recording all time by all union representatives for performing representational activities during the term of the Agreement as described in this Article.

Official Time Tracker Form for Employee or Union Representatives (copies attached as Appendix D) will be used to administer the use of official time for representational functions.

### Section 2

The parties agree in accordance with 5 U.S.C. Section 7131 of the FSLMRS, Union Officers and Representatives will receive reasonable amounts of official time within the scope of the FSLMRS.

### SECTION 3

Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on official time, including the solicitation of membership, elections of labor organization officials, and collection of dues. These activities must only be performed while in a non-duty status, i.e., leave without pay (LWOP) or annual leave.

### SECTION 4

A. The AFGE President will provide the Employer, or designee, written notification of the name, union position, duty station, telephone number, organizational unit, and immediate supervisor of each Union representative within ten (10) workdays of the effective date of this Agreement so that appropriate discussions can be held with these supervisors and managers. The designated time for each Union official or representative will come from a

block of a minimum of seventy hours of duty time with 40 hours going to the Union President and 30 hours to be designated by the Local Union president. This block of hours will separate from any duty time approved for training, arbitrations, negotiations and other 3rd party issues. All request above the 70 hours per pay period will not be denied arbitrary or capricious reasons. Reasons for denial will be in writing back to the employee requesting the official time.

## SECTION 5

A. Union representatives are required to stagger their use of authorized and approved official time over the course of the fiscal year. Union representatives will work out official time usage for official representational purposes consistent with this Agreement with their supervisors to accommodate both union representational activities and Agency assigned duties.

B. BUE(e) and Union Representative may meet briefly, e.g., up to 1-3 minutes, without official time being requested, as long as contacts are incidental and infrequent, interfere with patient care and occurs outside the department. When a BUE requests Union representation, the Union Representative will complete the HHS Official Time designated form(s) for Official Time if the meeting will last longer than 3 minutes.

## SECTION 6

A. Union representatives will be permitted to leave their assigned work area on official time, as appropriate, as authorized under and subject to this Agreement, including the limitations on pay and official time, after:

1. Providing written notification via HHS Official Time designated form(s) for Official Time to their immediate supervisor or appropriate Management Official;
2. Providing a good-faith estimate of the amount of time for which release is requested;
3. Indicating the destination; if any.
4. Specifying the appropriate representational category.

B. If there is more than one (1) Union representative reporting to the same supervisor, the parties agree to work closely and constructively to reduce the impact of undo hardship on the agency.

C. A Union representative shall, to the extent possible, schedule his/her known in advance absences so as not to compromise important work assignments, impede work, or interfere with the effective, efficient, and timely accomplishment of the Agency's mission. The supervisor shall, to the extent possible, schedule assignments, and inform Union

representatives of assignments, in advance in order to reduce the likelihood of conflicting demands. The time spent in carrying out the representational duties described in this Article may require some adjustment of a representative's workload if, in the judgment of the Employer, an adjustment is necessary and practicable.

D. Union representatives will be permitted to leave their assigned work area on official time as authorized under this agreement only after reporting to their immediate supervisor or appropriate management official and identifying the purpose of their activity. If the representative cannot be released at the time of the request and the amount of time the parties agree to, is reasonable, the representative and the supervisor will arrive at a mutually agreeable time for departure. The Union representative will be given a brief amount of time to inform any bargaining unit employees involved in the delay. Any timelines will be automatically extended by the same amount of the delay of being release for the reason of use for Official time.

E. If management is unable to approve a request for official time, management will, within one workday, identify an alternate time for use of the requested official time.

F. Upon entering any work area to meet with an employee, the representative will advise the immediate supervisor of his or her presence, the employee to be contacted, and the estimated duration of the meeting. For privacy concerns, the employee and Union representative will be allowed to meet in a location away from that employee's department.

G. On occasion, discussions between the Union representative and the employee may take longer than originally anticipated. In these cases, both will contact their supervisors telephonically or by e-mail to notify them of the need to extend the anticipated return time and the amount of additional time needed. The supervisor (of the employee and union representative) will determine if the time can be extended for each individual or if rescheduling is necessary due to work requirements.

H. When the Union representative needs to leave the work site and his or her supervisor is temporarily absent from the site, the representative will request release from another supervisor or manager in the chain of command or designee prior to leaving the work site.

