United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of U.S. SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS OPERATIONS And ADMINISTRATIVE LAW JUDGES INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO	Case No. 20 FSIP 001

DECISION AND ORDER

The U.S. Social Security Administration (SSA), Office of Hearings Operations (Agency or OHO) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO (Union) concerning negotiations over the parties' successor collective bargaining agreement (CBA). The mission of the OHO, a component of the SSA, is to resolve appeals from individuals whose claims for Medicare or disability benefits have been denied. The OHO has approximately 163 hearing offices of varying sizes throughout 10 Regions in the United States and Puerto Rico. The Union represents a bargaining unit consisting of approximately 1,200 administrative law judges (ALJs or Judges). The ALJs decide over 600,000 annual disability claims made by the American public seeking disability benefits. The parties' current collective bargaining agreement (CBA) became effective on September 30, 2013, and expired on September 30, 2017, but continues to roll over until the parties reach a new agreement.

BACKGROUND AND PROCEDURAL HISTORY

On June 18, 2018, the Agency provided the Union with written notice of its intent to terminate the CBA as of September 30, 2018, and open bargaining for a successor CBA. The parties started negotiating over ground rules on August 7, 2018, but were unable to reach a full agreement. The Agency requested the assistance of the Panel to resolve the bargaining impasse in Case No. 18 FSIP 078. The Panel asserted jurisdiction over the case and directed the parties to resume negotiations on a concentrated schedule with the Federal Mediation and Conciliation Service (FMCS). The parties resolved all of the issues during mediation and executed a ground rules agreement on October 18, 2018, for renegotiation of a successor CBA.

On February 22, 2019, the parties exchanged proposals over 32 articles, including a preamble in their successor CBA negotiations. During the first two-week session, which began on March 12 and ended on March 21, 2019, the parties signed off on six articles. The parties second session took place between April 9 and April 18, 2019, during which they reached agreement on one article, and discussed the remaining 25 articles. The parties met again from May 7 to May 9, 2019; however, they were unable to reach agreement on any articles. Therefore, the FMCS Mediator was asked to join the parties for the remaining negotiation sessions.

From June 3 to June 7, 2019, with the assistance of the Mediator, the parties reached agreement on eight articles. The parties' last negotiation session was from June 17 to June 21, 2019. The parties reached agreement on another eight articles, and narrowed the issues in dispute in the remaining nine articles. On June 20, the parties exchanged last best offers over the remaining nine articles. On June 28, 2019, FMCS released the parties from mediation. The Agency then requested the Panel's assistance on October 2, 2019.

On January 8, 2020, the Panel asserted jurisdiction over the nine articles, except for one proposal pertaining to telework within Article 15.[1] The Panel determined that the remaining disagreements within the 9 articles should be resolved by the parties resuming negotiations with Panel Member Wright. On January 9, the Panel informed the parties that it had asserted jurisdiction over this case and proposed dates to hold the Informal Conference in January and February 2020, at the Panel's Office in Washington, D.C. However, because the Union was unable to attend the negotiations until late April, the Panel revised its procedural determination and ordered the parties to submit written statements and rebuttal statements, if any, by February 14, 2020, to ensure a prompt resolution to the dispute. The parties timely provided those statements. The Union argues that the Panel does not have jurisdiction for the same reasons articulated during the investigation of this case.[2] The Panel considered and rejected all of the Union's objections prior to asserting jurisdiction over this matter, and the Union's reasserted objections remain unpersuasive.

PROPOSALS AND POSITIONS OF THE PARTIES

There are nine articles that the Panel considered: Article 1, Duration and Termination; Article 5, Employee Rights; Article 9, Official Time Union; Article 13, Judicial Training; Article 14, Hours of Work; Article 15, Telework; Article 18, Leave; Article 20, Reassignment and Hardships; and Article 29, Facilities and Services.

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1 Proposal 49 in the parties' side-by-side attachment.

2 The Union argued during the investigation of this case that the Panel lacked jurisdiction because (1) the Panel does not have an appropriate number of members under the Statute; (2) the Panel's composition violates the Appointments Clause of the United States Constitution; and (3) the parties are not at an impasse due to the Agency engaging in bad faith bargaining, which included, in part, allegations that several of the Agency's proposal waived the Union's statutory rights. The Union filed multiple unfair labor practice charges and grievances over the Agency's behavior during bargaining. The Union also filed two Motions to Stay the Panel's proceedings: one in the United States Court of Appeals for the Fourth Circuit; and the other with the Federal Labor Relations Authority. Both Motions have been denied.

1. Article 1 – Duration and Termination

I. Agency Position

The Agency proposes a seven-year contract and the Union proposes a three-year contract. The Agency contends that under a three-year contract, the parties would engage in perpetual bargaining, which would severely impede the efficiency and effectiveness of SSA's service to the public. The Agency argues that negotiation of a contract requires significant preparation time and time at the table, which is often at least six months, if not longer. Then, the parties must spend several more months with FMCS and the Panel if they are unable to reach agreement. The Agency states that this would result in ALJ's serving as Agency and Union bargaining team members, essentially working as full-time negotiators during this time, instead of focusing their duties on serving the public.

The Agency states that the ALJ's Union makes up the smallest bargaining unit at the Agency (approximately 1,200 employees); yet, bargaining this contact has cost SSA more than $255,000. Once a new CBA becomes effective, the Agency contends that it will need to expend additional funds to train managers across the country to ensure they understand their responsibilities under the new CBA. Considering this is such a high expense for the smallest bargaining unit in the Agency, the Agency requests a longer term to the CBA.

Regarding the second main issue in dispute under this Article, the Agency proposes to terminate all existing Memoranda of Understanding (MOU), Supplemental Agreements, or any other written agreements established during the term of the current CBA and start over once the new CBA becomes effective. The Agency argues that this language provides stability and certainty to abide by one agreement. Under the Union's proposal, the Agency states that it would require the parties to follow approximately 26 MOUs nationwide, most of which are obsolete relocation and renovation MOUs.

II. Union Position

The Union proposes a contract duration of three years. The Union argues that the Agency's proposal for a contract of seven years requires the Union to waive its rights under 5 U.S.C. § 7111(f)(3). The Union states that a CBA with a duration of three years or less has the protection of the contract bar rule, which limits a potential raid of a rival union. The Union argues that requiring it to have a CBA with a seven-year duration takes away the protection given to unions under the Statute.

On the merits, the Union argues that its first contract in 2001, had a duration of three years, with automatic rollovers and was in place for a decade before the Agency requested to renegotiate it in 2013. The current contract has a four-year term with automatic rollovers and was in place for five years before the Agency requested to renegotiate it. The Union states that if the Agency's concerns are over costs, the Union, in Article 9, eliminated travel expenses for future negotiations by agreeing to electronic bargaining in the future; it agreed to reduce the number of bargaining members to four; it agreed to reduce preparation time by one week and change the location of preparation in order to eliminate the travel costs of one of the bargaining

members; and the Union agreed to a limited bargaining period for a new contract. Thus, the Union argues that it made significant concessions in an effort to address the Agency's concerns over future bargaining; therefore, the Union contends that the costs associated with negotiating a contract after three years would not be substantial.

The Union argues that the fixed wages of managers and ALJs who will participate in negotiations should not be counted toward the Agency's costs it has incurred as a result of bargaining. The Union states that these wages would be paid to these individuals regardless of whether they were engaging in negotiations. The Union contends that the only additional money that would not have been paid, but for the negotiations, is travel and per diem. The Union calculated that amount to be $62,121.18 for the most current CBA negotiations.

As to supplemental agreements, the Union states that the Agency has no right to unilaterally eliminate agreed upon MOUs dealing with office openings, consolidation, moves, relocation, expansions, and renovations. The Union states that the parties never negotiated over the termination of these supplemental agreements. Therefore, the Union identified a limited number of MOUs that should remain in effect: ALJ Office Space; Reassignment to new offices where offices have been established; Elimination of Outlook Web Access MOU; WebTA MOU; Lincoln NE Satellite Hearing Office MOU; SSA/IFPTE Ground Rules; and Portland Office MOU. The Union also proposes that the following MOUs should no longer be in effect: Decision to Conduct 2013 Judicial Training; 2014 Judicial Training; Expansion Remodel Portland Hearing Office; 2015 Judicial Training MOU; 2016 Judicial Training MOU; Relocation of the Atlanta North HO; Relocation New Orleans; ODAR; Temp Expansion of Telework to Expediate renovation of Charleston, SC Ho; and Tulsa Hearing Location MOU.

Finally, the Union states that the new CBA should become effective per the ground rules agreement and "subject to the execution of the parties' collective bargaining agreement." The Union states that provisions disapproved by the Agency Head must be renegotiated and that no provision exists in the ground rules for severability. Therefore, the Union states that the agreement will not take effect until all matters have been resolved.

III. Conclusion

There are four issues in dispute under this Article: (1) duration of the new contract;[3] (2) termination of all existing MOUs, supplemental agreements, or any other written agreements between the parties;[4] (3) effective date of the new contract;[5] and (4) notification to terminate the new contract.[6] As to the merits of the first issue, the Agency provided an affidavit from the Director of the Office of Finance at SSA who stated that it has cost the Agency more than $255,000 to bargain this contract, which included approximately four days of ground rules negotiations and 28 days of contract bargaining. The Agency arrived at this calculation using salary; benefits; and overhead costs – travel was not included. For ground rules negotiations,

3 Proposal 2.
4 Proposal 4.
5 Proposal 1.
6 Proposal 3.

each team used two bargaining members, which cost the Agency approximately $23,721. For term bargaining, each team used five members, which cost the Agency approximately $231,000.

While the Union's agreement to limit future negotiation costs would help offset any costs associated with bargaining another contract, there would still be costs as a result of each of the bargaining team members negotiating a contract. The Union is correct that the Agency would pay these employees regardless of whether they participated in negotiations, but if the parties were not bargaining a new contract, those wages would be spent on the employees conducting Agency business rather than negotiations. Even though the Agency did not explain what is meant by "overhead" costs, excluding those amounts which total approximately $50,000, the Agency would still have incurred over $200,000 in costs as a result of CBA negotiations. As the Panel has noted in prior cases, the right to bargain must be exercised in an effective and efficient manner.[7] Requiring the Agency to incur these costs every 7 years compared to the Union's 3-year proposal, demonstrated a better use of taxpayer dollars. Therefore, the Panel imposes the Agency's Proposal 2.

Addressing the Union's argument that a seven-year contract waives its rights under 5 U.S.C. § 7111(f)(3), that argument is without merit. The Union is arguing that by having a contract of three years, a rival union will not be able to file a petition to unseat the Union. However, that is not true because another union may file a petition within the 45-day window prior to the CBA expiring.[8] Further, as the Union points out, each of the parties last two agreements were in effect for ten years and five years, respectively, and the Union did not produce evidence that any rival unions petitioned to unseat the Union.

The second issue that the parties disagree over is whether they should continue to be bound by agreements that were executed during the term of the current CBA. The Agency provided a sworn statement from a Lead Human Resources Specialist who oversees the team that performs Agency Head review. There are 26 MOUs, confirmed by the affiant, between the parties, most of which are not relevant to the terms and conditions of employment in the new CBA. The Union argued that there are some agreements the parties can terminate, and it provided specific reference to those, but others, the Union stated should remain in effect because the parties did not negotiate over the termination of those agreements. The Union's argument is unconvincing. During the successor CBA negotiations, the parties did negotiate over the termination of MOUs, but they did not reach an agreement as to whether those supplemental agreements should continue or terminate, i.e., the parties reached an impasse over this issue. The Panel asserted jurisdiction over this issue, along with numerous other issues within the nine articles in dispute and found that the best approach to take is to terminate existing agreements and start fresh with the successor CBA. If the Union wanted to maintain the 26 agreements it should have demonstrated why each agreement is necessary to roll over. As such, the Panel will adopt the Agency's Proposal 4, which will terminate existing MOUs. If the parties mutually

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7 *See, e.g., HHS and AFGE, Local 3601,* 2019 FSIP 031 (2019).

8 5 U.S.C. § 7111(f)(3) pertains to contract bars, which means that the Authority will not process an election petition for a rival union to unseat an incumbent union if there is a valid contact in place, unless the contract has been in effect for more than three years or the petition is filed not more than 105 days and not less than 60 days before the expiration of date of the agreement.

agree that these agreements or any others should survive, they are free to memorialize the terms of the agreement(s).

Next, the Union argued that the new agreement will become effective per the ground rules agreement and proposed that the CBA is also subject to "execution of the parties' collective bargaining agreement." In the parties' ground rules agreement, the parties agreed that "[i]f one or both of the Negotiating Teams decline to complete a signature page, the CBA will become effective after completion of Agency Head review." This means that the CBA will be executed when both parties sign the CBA. The agreement will become effective after Agency Head review is complete, or it will take effect on the 31st day if the Agency Head does not approve or disapprove the agreement. Therefore, the Panel will impose the Agency's Proposal 1, which requires the parties to follow the terms that they agreed upon in the ground rules, which will determine when the agreement will become effective.

Finally, the Agency proposed a more comprehensive notification requirement if one party wishes to terminate the new contract and initiate the bargaining process for a successor agreement. The Agency provided specific language over when the parties may open the contract (45 days prior to its expiration) and after opening the contract, the parties are to initiate ground rules negotiations 45 days after notice is received. Because the Agency's proposal is more complete, the Panel orders the parties to adopt Proposal 3.

2. Article 5 – Employee Rights

I. Agency Position

Under Article 5, the Agency argues that the Union's proposal to retain the language in the CBA that references the Administrative Procedure Act (APA), does not serve as a procedure or appropriate arrangement. Moreover, the Agency states that its proposal reflects the substance of the APA, as it specifically references the statute governing ALJ appointments found at 5 U.S.C. § 3105. The Agency states that the Union also seeks to retain a provision mandating that a manager, who is aware that an investigatory examination that may lead to discipline, inform the employee of the right to Union representation. The Agency argues that the right to request a union representative under section 7114(a)(2)(B) of the Statute includes no statutory obligation to inform employees of the right to request Union representation. Related to investigations, the Union's argument that a proposal permitting the Agency to make audio or video recordings for internal security reasons is a statutory waiver is without merit according to the Agency.

Next, the Agency states that the current CBA provides "[a]ny observation or complaint regarding a Judge's conduct occurring outside of the hearings and appeals process that may be used to propose discipline will be brought to the attention of the Judge as soon as possible after the receipt of the complaint." The Agency states that the Union proposes to keep the "as soon as possible" language and add a requirement that the Agency provide an investigatory report upon conclusion of the investigation. The Agency asserts that notification of complaints to ALJs and disclosure of investigatory reports are limited by law, regulation, and policy. The Agency further states that the Privacy Act does not require the Agency to first contact the subject of the investigation before contacting other potential witnesses, as the Union states it does. The

Agency argues that the Privacy Act states that agencies are required to "collect information *to the greatest extent practicable* directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs." 5 U.S.C. § 552a(e)(2) (emphasis added). Accordingly, the Agency argues that its proposal, which states that the Agency will follow applicable policies and law, provides rights and protections for both Judges and complainants.

Finally, the Agency proposes removing the provision in the CBA that states that ALJs will not be subject to disciplinary or performance actions for failing to meet "benchmarks." The Union proposes to maintain the provision, but replace "benchmarks" with "case processing guidelines," and adds a sentence stating that such timeframes will be "tolled for periods when an ALJ is absent." The Agency states that this provision is confusing, which has led to litigation related to its meaning and applicability. The Agency also states that this language is unnecessary, as ALJs have not been subject to disciplinary or performance actions based on failing to meet benchmarks/case processing guidelines alone.

II. Union Position

The Union states that the reference to "APA" protects both the Agency and ALJs. The Union argues that ALJs are prohibited from performing duties inconsistent with the APA; therefore, it is important that references to the APA are in the CBA to ensure that the Union can file grievances and arbitrations over encroachments to it. The Union also argues that the Agency's proposal violates the 5 U.S.C. § 3105.

The Union states that ALJs are not subject to performance appraisals or standards under 5 C.F.R. § 930.206 and 5 C.F.R. § 930.211. This clarification is not explicitly contained in SSA guidelines and, therefore, the Union contends that it is important that it be in the CBA. The Union states that is important for ALJs and managers to understand that the guidelines cannot be used unlawfully to take disciplinary or performance-based actions. The Union also states that when applying SSA guidelines, it is critical to clarify that approved leave and holidays will not count against Judges.

Next, the Union states that the current contract requires the Agency to inform ALJs that they have a right to a representative at investigatory examinations. The Union asserts that the Agency's proposal limits its obligation to delay an examination until a representative is available. The Union also argues that the Agency's proposal waives its right to be present during questioning of potential bargaining unit witnesses for any third-party hearings. The Union states that the Agency's proposal to permit audio and video recordings between interactions of Judges, their representatives, and managers is a waiver of laws mandating mutual consent for recordings.

Regarding complaints over a Judge's conduct occurring outside of the hearings and appeals process, the Union states that these matters should be brought to the Judge's attention as soon as possible after the receipt of the complaint. The Union claims that the Privacy Act of 1974 requires that when conducting an investigation concerning an employee, an agency must first seek information from the subject of the investigation before contacting other potential witnesses. The Union states that timely notification enables a Judge to remember what happened

related to the alleged incident. Relatedly, the Union also proposes that ALJs may provide information about suspected violations of conduct by a representative through their Hearing Office Chief Administrative Law Judge (HOCALJ) directly to the Office of General Counsel. The Union asserts that the intention of this proposal is to provide a clear path to ensure reporting.

Finally, the Union wishes to rely on the SSA's personal use policy applicable to all Agency employees over accessing Union email. The Union states that the Agency's proposal, which indicates that Judges must be on non-duty or lunch time when accessing emails from the Union, is an attempt to target Union activity, singling out Union emails over other non-Agency emails, which the Union argues is discriminatory under 5 U.S.C. § 7116 (a) (1) and (2).

III. Conclusion

The parties' main disagreements in this Article are over the following matters: (1) a reference to the APA; (2) Weingarten rights and obligations; (3) audio and video recordings; (4) complaints made about ALJ's and representatives; (5) consequences for failing to meet guidelines or benchmarks; (6) use of Union emails; and (7) Reduction in Force assistance. Regarding issue number one, the Union argued that it is important that references to the APA are in the CBA to ensure that the Union can file grievances and arbitrations if the Agency directs employees to perform duties inconsistent with their role as an ALJ.[9] Under the Agency's proposal, it specifically states that "Judges may not perform duties inconsistent with their duties and responsibilities as administrative law judge [sic] set forth in 5 U.S.C. § 3105. That section states, "[a]dministrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges." The Union argues that the Agency's proposal violates 5 U.S.C. § 3105; however, it is not clear how the proposal violates that section of the United States Code, when the Agency directly refers to it in its proposal. If ALJs are assigned duties inconsistent with their roles, the Union may grieve over those matters under the Agency's proposal. As such, the Panel imposes the Agency's Proposal 5.

The Union further argues under the same proposal that the Agency's request to record meetings for internal security matters is a violation of law.[10] Because it is up to the Agency to determine its own internal security practices, and the Union has not provided any case law to support its argument, the Panel will adopt the Agency's Proposal 5. Therefore, it is unnecessary to address the Agency's legal argument.

The next Union proposal expands the rights under the Statute by requiring managers to inform employees of their right to a representative in connection with an investigatory interview prior to the investigation.[11] The Agency has offered language which indicates it will comply with the Statute for all types of meetings where a Union representative may be present, including formal discussions, and third-party hearings.[12] It is unclear how the Agency's proposals waive

9 Proposal 5.
10 Proposal 5.
11 Proposal 6.
12 Proposals 7 and 13.

the Union rights under the Statute. Therefore, the Panel will impose the Agency's Proposals 6, 7 and 13.

Next, the parties each dispute the requirements under the Privacy Act.[13] This disagreement is ultimately a legal one. In essence, each side asks the Panel to impose their respective legal arguments into the CBA. The foregoing is not the proper role of the Panel because it has no ability to address such arguments. As such, the parties should rely on the law to resolve any legal disputes over this issue. The Agency's Proposal 10 best describes how to properly handle these disputes by requiring the parties to follow applicable law when an ALJ is under observation or has received a complaint regarding their conduct.

The last two issues in dispute relating to complaints and investigations are over the particular office, i.e., Office of the General Counsel, that ALJs can provide complaints of a representative's conduct, and a proposal that the Agency shall inform law enforcement officials of any credible claims of threat of harm against an ALJ.[14] The Union supported both of its proposals by stating that its language serves to provide employees a clear path defining where to file complaints and to serve as an additional safeguard for Judges. Therefore, the Union's Proposals 9 and 11 will be adopted.

Similar to the previous issue, the parties again disagree over what the Agency is permitted to do under law.[15] The Union proposes to prohibit the Agency from disciplining an ALJ for failing to meet case processing guidelines, while the Agency disagrees with that assertion. Each party argues that their proposal is consistent with the law. Once again, the Panel's role is not to issue legal conclusions. Therefore, the best approach to take with regard to Proposal 8 is to adopt the Agency's proposal, which requires both parties to withdraw their proposals.

The penultimate area of disagreement is over the employees' use of Union emails.[16] The Agency seeks to limit this use during non-duty time. The Union argues that the Agency's proposal is discriminatory. In general, an employee's engagement in Union activity must be conducted on non-duty time, such as during breaks or during lunch, or while on official time. Consistent with this notion, the Panel will impose the Agency's Proposal 14, but will add to the language that "Judges must be on non-duty, lunch time, or *official time,* when accessing electronic messages from the AALJ."

Finally, the Union proposed that reduction in force assistance will be provided to Judges.[17] The Agency agrees with the Union's language, but also includes language that states assistance will be provided "consistent with applicable law and regulation." The Agency's proposal best resolves the dispute, as the Union did not explain why the added language does not meet the parties' interests. Therefore, the Agency's Proposal 12 is adopted.

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13 Proposal 10.
14 Proposals 9 and 11.
15 Proposal 8.
16 Proposal 14.
17 Proposal 12.

3. Article 9 – Union Time/Official Time

I. Agency Position

Article 9 revolves around official time, or as the Agency prefers to call this section, "union time." The Agency initially proposed a bank of 2,000 hours for the Union to use to engage in representational activities. The Agency states that its proposal of 2,000 hours represents a union time rate of 1.66 hours per bargaining unit employee, since there are approximately 1,200 ALJs in the bargaining unit. There are two other unions at SSA: the National Treasury Employees Union (NTEU) and the American Federation of Government Employees (AFGE). Currently, the Agency states NTEU represents 2,114 bargaining unit employees and has a bank of 6,500 hours of union time per fiscal year, which equates to a ratio of 3.7 hours per bargaining unit employee. The Agency asserts that AFGE has a bank of 125,000 hours of union time per fiscal year, which represents a ratio of 2.7 hours per bargaining unit employee based on its bargaining unit of 45,000 employees. After reviewing the parties' final offers, the Agency increased its bank proposal for the Judges Union to 3,600 hours, since that would equate to a per-bargaining unit employee rate of 3.0, similar to what's provided to the other two unions that represent employees at SSA. In addition to the bank, the Agency proposes an individual cap of up to 200 hours of official time per fiscal year for all representatives except the President, who will receive up to 500 hours. Finally, the Agency states that the Union would still be entitled to utilize union time under section 7131(a) and (c) of the Statute if the bank and caps are exhausted by charging the needed time to the following fiscal year's allotment.

The Agency argues that the rate it's offering the Union is substantially more than agencies are supposed to strive for pursuant to Executive Order (EO) 13837, Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use, which is one hour or less per bargaining unit employee. For each year for the past six years, the Agency states that the Union utilized an average of 13,955 hours of official time, amounting to 10.59 hours per bargaining unit employee. The Agency estimated that this has cost it at least $1.1 million during this time.

The Agency states that the Union's proposal of "reasonable time" amounts to unlimited official time, enabling ALJs to become full-time Union representatives and avoid performing any Agency work. The Agency argues that the Union's proposal would also lead to endless litigation over what constitutes "reasonable." The Agency states that its proposal is intended to eliminate loopholes in the current Article 9. For example, time spent on Equal Employment Opportunity (EEO) matters is excluded from the union time bank and caps under the current CBA. The Agency states that its proposal would prevent Union representatives from combining their union time cap hours with EEO official time to ensure that employees do not manipulate a combination of Union time and EEO time and end up spending 100 percent of their time away from Agency duties. The Agency, however, states that it is not proposing to prohibit the Union from utilizing official time under applicable EEO regulations; it is simply proposing that official time for EEO representation will count against the Union time bank and caps under the CBA.

Finally, the Agency proposes to prohibit the use of union time on telework. The Agency states that each Judge has a private office; therefore, Union representatives may use those spaces

to provide representation to employees. The Agency asserts that this proposal does not restrict the right of the Union to use official time outside of Agency facilities, such as for trainings, and third-party hearings.

II. Union Position

The Union proposes that the title of this article should be "official time," as it states that this is how it is labeled in the Statute prescribed by Congress. In support of its proposal, the Union states that the Panel noted in a different case, when addressing how to refer to official time, it was "not clear from Management's position how 'release time' may act as a substitute for official time."[18] Thus, the Union states here it is similarly unclear how "union time" can act as a substitute for "official time."

Turning to the amount of official time that the Union should receive each fiscal year, the Union proposes that it would receive official time under section 7131(a) of the Statute for time at the bargaining table and any mandated meetings or hearings with the Panel. The Union would also receive official time under 7131(c) for time authorized by the FLRA. Finally, the Union would receive reasonable official time under section 7131(d) for all other representational activities. The Union states that it is asking for no more than what is required by law and its proposal is consistent with two recent Panel decisions.[19]

The Union argues that over the last 19 years, the parties' contracts have permitted Union representatives to use between 18,200 and 22,000 hours of official time to represent employees, and to submit requests for approval of official time after-the-fact. The Union states, however, in the last four years, the Union's representatives used their available time parsimoniously, using on average 15,226 hours per year. The Union contends that its representatives were only using about 70 percent of the available official time, and providing about 7,000 hours per year back to the Agency in the form of time performing regular job duties in lieu of the available official time.

In an effort to reach a resolution, the Union agreed that its representatives would seek prior approval for the use of official time. It further agreed to remove the promise of the 22,000 hours in guaranteed official time, instead proposing to create a procedure where official time would be requested on a case-by-case basis, such that the Agency could track official time. In response, the Union asked the Agency for some safeguards such as a requirement that the Agency respond to requests for official time prior to the date it is needed, that the relevant time limits for matters such as arbitrations be tolled if the Agency refused to grant official time, and that the Agency would be required to give a credible explanation for denying official time and not deny such requests unreasonably.

To support its proposal, the Union states that official time used by its ALJs has not interfered with its work. On October 12, 2019, Deputy Commissioner Gruber wrote, "we surpassed the key measures tracking our progress...[t]he accomplishments are amazing..." She went on to state 282,000 fewer hearings were pending from last year, as well as stating that the

18 *See Department of Defense Education Activity and Federal Education Association*, 2019 FSIP 001, p. 9.

19 *See Dep't of Veterans Affairs and NFFE*, 19 FSIP 024 (2019), p. 4; *Department of Health and Human Services and National Treasury Employees Union*, 2018 FSIP 077 (2019), p. 13.

Agency is exceeding its goals on case processing time. The Union argues that this data demonstrates that the official time utilized by the representatives of this bargaining unit have in no way harmed the Agency's mission.

The Union argues that by placing an artificial cap on official time for representation, the Agency is denying employees Union representation once this cap is reached. Under the Agency's proposal, the Union states that it would have no alternative but to schedule meetings for representational activities with management on weekends and after office hours in order to bargain with management, yet maintain enough official time to represent its employees. The Union states that this is inconsistent with section 7131(a) and (c) of the Statute; a waiver of the Union's statutory rights. The Union argues that the Agency's proposal to include EEO representation time in the bank and cap of hours proposed by the Agency is illegal because EEO matters are governed by an entirely different statue and regulations. The Union also states that the Agency's refusal to prohibit official time while teleworking is contrary to law.[20] Without the ability to perform official time while teleworking, the Union states it will not be able to adequately represent employees. Further, the Union states that the Agency provides no Wi-Fi capability for it to use to conduct business on Union-assigned computers while at SSA.

Next, the Union argues that the Agency's restriction on official time based on an employee being subject to a workload or policy compliance directive is not permitted by the plain language of the Statute. The Union also states that the Agency's proposal that Union representatives must be SSA employees is an attempt by the Agency to prevent bargaining unit employees from receiving time to meet with a Union representative who may not be a SSA employee, like a Union designated attorney. The Union argues that the effect of this would be to allow the Agency to restrict the Union's right to designate its representatives, in violation of 5 U.S.C. §§ 7102(2) and 7114(a)(5). Similarly, the Union states that the Agency's proposal to immediately place a Union official in absent without leave status and subject to appropriate disciplinary action should they not request official time in advance is discriminatory under the Statute. Finally, the Union states that the Agency's proposal that official time must be "staggered" is contrary to the Union's representational rights under the Statute.

III. Conclusion

The parties first area of disagreement is over how to label time spent representing employees.[21] The Agency proposes to call it "union time," while the Union proposes to call it "official time." The Union accurately notes that time spent engaging in representational activities is called "official time" under the Statute. As such, the Panel will impose the Union's Proposal 15.

Next, the parties disagree over the amount of official time that Union representatives will be permitted to use each year.[22] To support its position, the Agency offered a sworn statement from the Director in the Office of Finance who estimated that the Union's official time and associated costs during the term of this CBA have been as follows:

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20 5 U.S.C. § 6501(3).
21 Proposal 15.
22 Proposals 16, 28, 29, 30, 31, 32, and 33.

- FY 2014: 11,888 hours; $1,176,978;
- FY 2015: 10,941 hours; $1,108,326;
- FY 2016: 14,667 hours; $1,504,676;
- FY 2017: 16,588 hours; $1,729,927;
- FY 2018: 15,033 hours; $1,597,442;
- FY 2019: 14,614 hours; $1,556,146.

On average, the Union utilized 13,955 hours of official time per year for the past six years, amounting to roughly 11 hours of official time per bargaining unit employee. Based on these numbers, the Agency argued that it was necessary to bring the Union's total amount of time and bargaining unit employee rate down to better align with the other two bargaining units at the Agency. The Agency initially offered the Union a bank of 2,000 hours, with an individual cap of 200 hours of official time per fiscal year for all representatives, except for the President who would receive a cap of 500 hours. The Director estimated that this offer would decrease the Agency's official time costs to $212,996. However, after reviewing the parties' final proposals, the Agency revised its offer to better align the proposal with the 3.0 union time rate that the two other unions receive at SSA. Therefore, the Agency offered the Union 3,600 hours of official time, which equates to a union time rate of 3.0 to be used for section 7131(a), (c), and (d) statutory time. In addition, the Agency proposed an individual cap of up to 200 hours of official time per fiscal year for all representatives except the President, who would receive up to 500 hours. The Agency also permitted the Union to utilize the next year's bank and cap if the current year's bank and cap had been used.

On its face, the Agency's proposal appears to be reasonable. However, aside from conclusory assertions that the NTEU bargaining unit is mostly made up of attorneys, it did not substantiate why the Union's bank and cap should be similar to the other two unions at the Agency. The Agency further argued that because ALJ positions are not subject to performance appraisals and awards, the Union will not need to spend official time grieving these actions. This might be true, but without knowing a breakdown of the specific representational activities that the Union engaged in during the last six years under the current contract and the amount of time spent in each activity, it's difficult to make this conclusion. This data would have assisted the Panel in determining whether the bank and cap proposed by the Agency is reasonable and permits the Union to perform its representational responsibilities.

The Agency also pointed to the President's Executive Order 13837, Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use for support of its proposal. The Panel has consistently written that the President's Executive Orders on federal-sector collective bargaining and labor-relations are an important source of public policy guidance for the Panel and an official time amount in excess of 1 hour per bargaining unit employee should ordinarily not be considered reasonable, necessary, and in the public interest.[23] However, the Panel also stated that it has the authority to award a greater amount of time, but the

23 *See, e.g., HHS and AFGE, Local 3601,* 2019 FSIP 031 (2019).

moving party for such time has the burden to demonstrate that their requested time is reasonable, necessary, and in the public interest.[24]

Turning to the moving party, the Union provided a statement from the Deputy Commissioner from this past October who praised the Agency for a "remarkable FY 2019." Based on her statement, SSA was able to:

- Reduce its hearings pending to 571,471 – surpassing its goal of 591,200 and ending the year with over 282,000 less people waiting for hearing than in October 2018;
- Issue 793,862 total dispositions – surpassing its goal of 778,500;
- Reduce its average processing time to 506 days – surpassing its goal of 515 days, "but providing the people we serve with hearing decisions 89 days faster than FY 2018;"
- Exceed the goal established (95%) for aged cases at a mark of 98.2%;
- Process nearly 8,500 cases in FY 2019 that were 1,000 days old or older.

While the remarks made by the Deputy Commissioner are certainly praiseworthy, the Panel does not find that they demonstrate how the Union's use of over 14,000 of official time in FY 2019 is "reasonable, necessary, and in the public interest."[25] Although the Agency made an attempt to broker a deal by offering the Union 3,600 of official time because a union time rate of 3.0 is in line with the other two bargaining units at the Agency, that is not the relevant statutory standard. Instead, 5 U.S.C. Section 7131(d) requires that official time may only be be granted where it is "reasonable, necessary, and in the public interest." Because neither party demonstrated to the Panel that their proposal is "reasonable, necessary, and in the public interest", the Panel will take a similar approach that it has taken in other cases in which neither party has justified their position.[26]

The Panel has stated that "[g]iven the lack of persuasive arguments in this dispute, we believe it is appropriate to apply [the Executive Order on official time] 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."[27] Applying this guidance to this bargaining unit, it would result in 1,200 hours of official time each fiscal year, which would equate to a 1.0 cap of official time per bargaining unit employee. Taking this recommendation into account, the Panel will impose the below language to replace Proposals 16, 25, 28, 29, and 30. The Panel will also impose the Agency's Proposal 33, which requires the proration of the bank and cap on official time based on the date the successor CBA becomes effective. Should the parties disagree with the Panel's determination over the amount of official time permitted to the Union, and they determine that the Union is entitled to a greater amount of official time, the parties are free, pursuant to 5 U.S.C. Section 7131(d), to agree to an amount that is "reasonable, necessary, and in the public interest" without having to bring that matter back to the Panel.

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24 *Id.*

25 5 U.S.C. § 7131(d).

26 *See e.g., HHS and AFGE, Local 3601,* 2019 FSIP 031 (2019) (*HHS)*; *Department of Labor and AFGE, Local 12*, 20 FSIP 016 (2020).

27 *Id.*

> 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:
>
> 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.
>
> 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.
>
> Any other matter arising under the FSLMRS as described by Section 7131(d) of the FSLMRS.
>
> If the bank or cap authorized is exceeded in any given year, the Union may use the following year's official time allotment.
>
> Nothing in the language set forth above shall constitute a waiver of either party's rights arising under the FSLMRS.

The Union argues that in two prior Panel decisions the Panel imposed "reasonable official time," therefore, the Panel should take the same approach here. Those two cases were decided when the key provisions in the President's Executive Orders on labor-relations matters were still enjoined in federal court. The Executive Orders are now effective and the Panel may utilize them as guidance in this case, as it has done in prior cases. The Union further argues that a proposal which provides a bank or cap on the amount of official time interferes with its ability to represent its bargaining unit. However, a bank and cap on the number of hours permitted for official time does not prohibit the Union from utilizing official time to represent its bargaining unit. It is simply prescribing the amount of official time to be used under the CBA to represent its bargaining unit. Further, should the Union exceed the amount of official time permitted by the bank and cap, the Panel has ordered that the Union may use the following year's official time allotment.

The Union also argues that the Agency's proposal to include time spent representing employees in EEO matters within the bank and cap is illegal.[28] The FLRA has long held that parties are authorized under 5 U.S.C. §7131(d) to negotiate all matters concerning official time, including the use of official time to assist unit employees in EEO proceedings.[29] The Agency is not prohibiting the Union from utilizing official time under applicable EEO regulations. It is simply proposing that official time for EEO representation will derive from the bank of official time hours under the CBA. If the Union were to run out of bank time, it could turn to the EEO regulation just as it could for other mandated grants of official time, e.g., 5 U.S.C. §7131(a). The Union offered no legal authority that prohibits this arrangement.

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28 Proposal 32.

29 *See, e.g., U.S. Dep't of Veterans Affairs and AFGE, Local 2145*, 45 FLRA 391, 400 (1992).

The parties next disagreement is over permitting the Union to work official time during credit hours, on the weekends, or while teleworking.[30] The Agency did not provide support for limiting the Union's official time use during these timeframes. Thus, permitting Union officials the flexibility to engage in official time while in a duty status will better permit them to perform their representational duties while at SSA, or at their alternative duty location. Because the Panel adopts the Union's Proposals 17 and 18, it is unnecessary to address their waiver arguments.

The Union argued that the Agency's proposal, which requires prior supervisory approval by an employee before consulting with the Union and the acknowledgement that the employee must continue to perform Agency assigned work, somehow prevents the Union from designating a representative of its own choosing to meet with the Union and interferes with the employees' and Union's rights.[31] The Union is correct that it is entitled to designate its own representatives; however, based on the wording of the proposal, it is not clear how the Agency's language interferes with the Union's or employees' rights under Statute. The Agency's proposed language ensures that there is accountability on the part of the employee and also ensures that Agency work is completed. Therefore, the Panel will impose the Agency's Proposal 21.

The next four proposals pertain to accountability of official time. The Agency requests that the Union provide it with a list of the names of all designated representatives along with their duty location and telephone number.[32] The Agency also proposes that the Union first request and receive approval prior to engaging in official time.[33] Providing the Agency information about the Union's representatives makes sense from a practicable standpoint and so does the Agency's proposal on requesting official time prior to engaging in the official time; it better serves the Agency by ensuring that Agency work is completed. It also serves the employee by ensuring that he or she is not disciplined for leaving work when not permitted to do so. What's more, the Union has acquiesced in its position statement to requesting official time in advance. The Panel will, however, modify the Agency's Proposal 23 to permit a Union representative leeway in circumstances where the Union official is unable to receive prior approval before engaging in representational activities, e.g., the supervisor does not respond in a timely manner because he or she is out of town or is busy with Agency work. As such, the proposal will read, "A representative who uses official time without advance management approval *may* be considered absent without leave and *may be* subject to appropriate disciplinary action." This will provide greater flexibility to managers and Union officials. Based on the foregoing, Panel adopts the Agency's Proposals 22, 24, and 27.

The Union's proposal on monthly reporting of official time used is more efficient and effective.[34] It will keep both parties updated and informed about the official time used each month to enable better tracking and accounting for official time. Thus, the Union's Proposal 26 will be adopted.

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30 Proposals 17 and 18.
31 Proposal 21.
32 Proposal 22
33 Proposals 23, 24, and 27.
34 Proposal 26.

Finally, the Agency did not provide support for the following proposals: limiting a Union representative's official time if he or she is subject to a workload or policy compliance directive;[35] requiring Union representatives stagger their official time use over the course of the fiscal year;[36] and not permitting official time for union-sponsored training.[37] If the Agency needed these limitations in place it should have offered evidence that the Union's representational activity has interfered with the Agency's ability to accomplish its mission. Thus, the Panel orders the Agency to withdraw its proposals referenced here. Based on this recommendation, it's unnecessary to address the Union's waiver arguments.

4. Article 13 – Judicial Function

I. Agency Position

The Agency proposes to eliminate this article because it is unnecessary. The Agency states that the Union seeks to add what amounts to a legal conclusion that SSA Judges are inferior Officers – a determination subject to ongoing litigation.

II. Union Position

The Union states that it is crucial to the bargaining unit that the functions and authorities of the Judges given under law are recognized and agreed to by the Agency. It is also crucial to the bargaining unit that both the Union and management agree as to the status of Judges as inferior officers appointed under 5 U.S.C. Section 3105.[38] The Union states that the Supreme Court in *Lucia v. Securities and Exchange Commission*,[39] found that ALJs are inferior officers. The Union argues that the Agency's refusal of recognition has led to arbitrary management decisions, countless grievances, and agency policies and regulations that are inconsistent with the APA and Supreme Court case law, as well as the expenditure of taxpayer resources for what is already established by law. The Union states that having this provision in the CBA enables the Judges to file grievances to ensure decisional independence. Therefore, it requests that the Panel make this distinction in the parties' CBA.

III. Conclusion

The parties' main disagreement is over whether ALJs are inferior officers. The Union asks the Panel to certify that ALJs are inferior officers.[40] The Agency is opposed to including this language in the CBA because the Agency states that it is subject to ongoing litigation; however, the Agency did not provide a reference to that litigation. Notwithstanding, rather than

35 Proposal 20.
36 Proposal 31.
37 Proposal 19.
38 5 U.S.C. Section 3105 states, "[e]ach agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges."
39 138 S. Ct. 2044 (2018).
40 Proposal 34.

interject itself in what appears to be a legal argument over how Judges are labeled, the Panel will impose the following language, "ALJs are appointed consistent with applicable law and regulation."

5. Article 14 – Hours of Work

I. Agency Position

For credit hours, the Agency suggests that a Judge request and obtain approval prior to working credit hours. The Agency argues that this procedure is consistent with how employees are managed across the SSA and presents no burden to Judges. The Agency states that Judges can simply use SSA's long-established time and attendance system (WebTA) to submit such requests electronically in a matter of seconds.

Concerning premium pay, the Agency states that the parties agreed to remove language from the current CBA that stated, "Judges cannot work overtime." While the Agency states that 5 U.S.C. § 5574 prohibits overtime pay for Judges who earn "the maximum amount of basic pay for GS-15" or "the rate payable for level V of the Executive Schedule" (the overtime cap), there are some Judges who do not earn that amount and may be eligible for overtime. Therefore, because some Judges may receive, while others may not, the Agency's proposal removes the overtime language from the CBA. The Agency states that despite removing this language, Judges will still be entitled to premium pay consistent with applicable law.

Lastly, the Agency states that the Union's premium pay proposals are attempts to obtain contract language that advances their narrative that the Agency's expectations for the quality, quantity, and timeliness of work produced by ALJs are unrealistic. For example, the Union's proposals guarantee premium pay for eligible Judges who are assigned work that "cannot reasonably be expected to be completed in the basic work requirement." Similarly, the Union proposes that the Agency "set reasonable goals and benchmarks, as much as practicable, to avoid the need for Judges working in excess of the basic work requirement." The Agency argues that the claim that this language is necessary because Judges have donated thousands of hours of leave back to the Agency is not accurate. The Agency states that the Union's data, which tried to support this assertion included management Judges. When accounting for only bargaining unit Judges, the Agency states that it equates to roughly 30 hours a year that Judges donate back to the Agency. Regardless, the Agency states that the most efficient resolution is the adoption of the Agency's position simply to follow the applicable overtime laws and regulations.

II. Union Position

The Union wishes to affirm that consistent with law, credit hours are at the election of the Judge. The Union states that the Agency's proposal to require pre-approval for working credit hours is not the current practice between the parties. The Union argues that SSA's backlog has been eliminated only due to employees working credit hours. The Union states that if Judges must wait for approval to work an extra hour at the end of the day, the opportunity will be lost if approval is not immediately granted.

The Union states that it will not waive its Judges' right to premium pay. Therefore, the Union states that it is important to the Union that this provision be placed in the CBA, because many employees in the bargaining unit are not aware that they are eligible for premium pay. The Union argues that it has been a consistent longstanding practice of the Agency to fail or refuse to allow bargaining unit employees to be paid Title 5 overtime. In 2016, the Union states that Judges lost 43,086 hours of annual leave and credit hours, and donated 4,471 hours of annual leave. In 2017, Judges lost 44,872 hours of annual leave and credit hours, and donated 3,822 hours of annual leave. In 2018, the Union states that Judges lost 44,098 hours of annual leave and credit hours, and donated 5,544 hours of annual leave. Thus, the Union states that Judges continue to lose earned credit hours, which should be compensated in overtime or compensatory time, which is why there needs to be a provision in the CBA for obtaining such time.

Finally, the Union states that Agency goals and benchmarks have only been realized by the loss of leave and credit hours. Therefore, it requests an assertion on the part of the Agency that goals and benchmarks will be based on only a 40-hour work week. The Union argues that the excessive loss of hours referenced above, demonstrates the need for this provision.

III. Conclusion

The parties remain in dispute over two issues: (1) credit hours; and (2) premium pay. The parties have agreed that Judges may be permitted to work credit hours based on the Judge electing to work a flexible work schedule. For example, both parties' proposals come directly from the Federal Employees Flexible and Compressed Work Schedules Act pertaining to credit hours and both parties indicate that Judges may elect to work credit hours. However, the Union's proposal adds that the Judge may elect to work credit hours "of their own choosing."[41] Under 5 CFR 610.111(d), credit hours are worked voluntarily by employees, so it is unclear why the Union needs that additional language. Therefore, the Agency's Proposal 35 should be imposed here.

The second issue in dispute pertaining to credit hours, is the Agency's proposal that Judges must submit a request and receive approval prior to working credit hours.[42] Practically speaking, credit hours are voluntary, but they are subject to management approval. As such, the Agency's proposal will ensure that those hours are approved before an employee is permitted to work them. This makes for a more efficient operation of Agency business. Thus, the Panel imposes the Agency's Proposal 39.

Relatedly, the Union claimed that there needs to be a reference that the Agency will set reasonable goals and benchmarks for Judges to avoid the need to work additional hours beyond the basic 40-hour workweek.[43] The Agency did not offer a proposal, but argued that the Union's language limits its ability to assign work. It is questionable whether the Union's proposal interferes with management's ability to assign work under the Statute. Therefore, the Panel will require the Union to withdraw Proposal 38.

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41 Proposal 35.
42 Proposal 39.
43 Proposal 38.

The last dispute is over the inclusion of language that would affirm the ALJs ability to earn premium pay who are not eligible to work credit hours because they, for example, are working a compressed work schedule.[44] The Union would like to capture the ALJs ability to earn premium pay in the CBA because it states that the Agency has not authorized compensation for the additional amount of time Judges have worked beyond a normal workweek. The Agency is opposed to including such language in the CBA because depending on the salary of the Judge, he or she may not be eligible for premium pay. Since both parties agree that Judges may earn premium pay, the Panel imposes the following language: "Judges may be entitled to premium pay consistent with applicable laws and regulations." This language will ensure that there is recognition that Judges may earn premium pay, yet not overly confuse the issue with redundant language. The Panel will leave the first section contained within the Union's Proposal 37, which authorizes credit hours, as the language is consistent with the statutory definition of credit hours. The Panel will remove the second section of that Proposal.

6. Article 15 – Telework

I. Union Position

a. Procedural Issues

The Union argues that it did not address Article 15, Telework in its statement of position because the Panel indicated in the procedural determination letter that it was withdrawing its jurisdiction over the following proposal contained in the Article: "The Agency retains sole discretion to change, reduce, suspend, or eliminate approved telework days of any Judge, office or agency-wide due to operational needs." In response to the Panel's letter, the Union states that it understood the Panel's direction to mean that the Panel was withdrawing its jurisdiction over Article 15. The Union states that this notion was confirmed when the Agency withdrew this proposal. With the Agency's withdrawal of the proposal, the Union states that it was difficult to discern the Agency's new position with regard to the Telework Article until the Agency provided its statement of position. Thereafter, the Union determined that that Article 15 was still in dispute, so the Union provided its arguments for this Article in its rebuttal statement.

II. Agency Position

a. Procedural Issues

The Agency argues that the Union chose not to address Article 15 in its statement of position despite the Panel's clear assertion of jurisdiction over the Article. The Agency states that Counsel for the Union have shown themselves to be knowledgeable in legal procedures, as they have filed pleadings with both the Authority and the Fourth Circuit Court of Appeals relating to these impasse proceedings. While the Union may properly respond in its rebuttal to issues raised in the Agency's statement of position regarding Article 15, the Agency argues that the Panel should not consider new arguments, evidence, or information offered in the Union's rebuttal statement.

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44 Proposals 36 and 37.

b. Merits of Proposals

For the last several years, the Agency and Union have been operating under the Telework Article of the expired CBA, which was imposed in large part by the Panel and included language provided by a Panel-ordered factfinder.[45] One provision that was imposed stated that Judges could telework as long as they scheduled a reasonably attainable number of hearings. The Agency states that this language has caused significant issues for SSA and the Union since its inception.

First, the Agency states that the practice of using hearings scheduled to determine telework eligibility has proven to be problematic because hearings scheduled may not result in cases being heard and decided. For example, Judges may schedule a sufficient number of hearings for the purpose of initial telework eligibility, but then postpone or cancel hearings for claimants who may have been waiting hundreds of days for their scheduled hearing, thus resulting in inefficiencies and delay in adjudicating claims. Additionally, after the Agency established expectations regarding a reasonably attainable number of hearings scheduled, the Union filed 28 grievances in the span of two years, costing the Agency both litigation expense and valuable personnel time. Thus far, the Agency states that decisions on the arbitrated grievances have resulted in inconsistent determinations regarding what constitutes a "reasonably attainable" number of hearings scheduled.

Finally, the Agency states that the current CBA language tying telework to scheduling "a reasonably attainable number of hearings" was issued when Agency regulations stated that "Judges set the time and place for hearings." 20 C.F.R. §§ 404.936(a), 416.1436(a) (eff. June 24, 2016 to January 16, 2020). However, the Agency's regulations were changed in 2019, to reflect that the Agency sets the "time and place for any hearing." 20 C.F.R. §§ 404.936(a), 416.1436(a) (eff. January 17, 2020). Thus, the Agency states that the current CBA language on this point is not applicable in 2020. Rather than isolating a single metric (e.g., number of hearings scheduled), the Agency proposes a more holistic assessment of the quantity, quality, and timeliness of ALJ work in order to determine telework eligibility.

For millions of Americans, the Agency states that an ALJ serves as the "face of SSA"—an individual they have waited a year or more to see and plead their case. The Agency asserts that ALJs serve on the front lines of SSA in cities and towns across the country – they need to be available and ready to serve the public in the local SSA hearing office, not working at home an almost unlimited amount of time as proposed by the Union. The Agency states that its proposal offers the flexibility needed to set expectations for Judges in an environment where hearings operations are evolving (e.g., fluctuating receipts, increased use of technology for hearings, and ongoing changes in Agency regulations and policy).

The Agency outlines the proposed eligibility criteria for a Judge to participate in telework. The Agency states that if someone is not doing their job, they require additional interaction, oversight, and assistance in the office. The fact that Judges are not subject to traditional performance plans does not mean they should continue to telework if they fail to meet public service expectations – a concept the Agency stated is consistent with the intent of the

45 *See SSA and IFPTE,* 2012 FSIP 54 (2013).

Telework Enhancement Act of 2010 (Telework Act).[46] Therefore, the Agency developed criteria required of Judges in order to telework.

The Agency states that the criterion that a Judge must not have been subject to a reprimand or finding of good cause for discipline in the prior 18 months ensures that such Judges are closely monitored for an appropriate period of time; the condition that a Judge must not have failed to comply with a workload or policy compliance directive in the prior six months addresses those Judges who are not meeting public service expectations and acknowledges that they should not be teleworking if they need additional assistance meeting those expectations; the condition that Judges not be on sick leave restriction or counseled for sick leave abuse ensures that Judges who are abusing the leave program are not on telework; and the condition that Judges should not require "close supervision" from management also ensures that those Judges who are not meeting public service expectations, or who require more supervision, are in the office receiving the assistance they need.

Next, the Union proposes that Judges may telework on all non-hearing days, "unless doing so results in reduced productivity, the operational needs of the agency materially change requiring greater attendance on non-hearing days or the Agency directs attendance for mandatory trainings and/or meetings." Under the Union's proposal, the Agency claims that it may only make changes to the telework program if one of these limited circumstances exist. Additionally, the Union proposed a "credible need" standard for the Agency to "change, reduce, suspend, or deny the telework request." The Agency states that the Union is essentially proposing unlimited telework, and then setting up an ambiguous standard that the Agency must meet in order to make any changes to the telework program. The Agency argues that such an approach would handcuff the Agency's ability to manage the telework program when it determines changes are necessary to ensure and/or improve service to the American people.

The Agency proposes that the Union have a single alternate duty station (ADS) and that it be geographically convenient to the ALJ's official duty station (ODS) for call-back purposes. The Agency argues that allowing for an unlimited number of ADSs – as proposed by the Union – would make it impracticable for the Agency to enforce the ADS requirements, and may compromise safety, security and employee productivity. In addition, in the event of a call-back, a problem with a Judge's laptop, or other reason for the Judge to return to the ODS, the two-hour geographical radius is reasonable.

Finally, the Agency states that Judges who are teleworking may be required to office-share and provide a written account of work completed while teleworking. The Union argues that these requirements are in violation of the Telework Act because they treat teleworking Judges differently than non-teleworking judges. However, the Agency asserts that the Telework Act does not prohibit an agency from imposing requirements for participation in a telework program or requirements that specifically provide accountability for teleworkers, such as providing a written account of work completed while teleworking, using instant message program to reflect the Judge's work status, and timely responding to instant messages from the Agency. The Agency states that its proposal does not impermissibly treat teleworking Judges

46 See 5 U.S.C. §§ 6501, et. seq.

differently, but rather, simply requires them to comply with the requirements of the Telework Program in which they voluntarily choose to participate.

III. Conclusion

a. Procedural Issues

The Panel's procedural letter was clear to the parties: "[t]he Panel determines…to assert jurisdiction over the nine articles in dispute, **except for one proposal** discussed below..." Thereafter, the Agency emailed the Panel and the Union stating, "the Agency withdraws the following *proposal* from its Article 15 (Telework) Last Best Offer…" (emphasis added). It is evident from the Panel's procedural determination letter and the Agency's subsequent email that only one proposal within Article 15 was withdrawn. If the Union was confused it could have reached out to the Panel or the Agency to clarify it. As such, the Panel will consider only the Union's proposals and not the arguments advanced in the Union's rebuttal statement when determining which party's proposal to adopt. To allow the Union to address its proposals with new arguments in its rebuttal statement would unfairly prejudice the Agency because the Union would have the benefit of the Agency's proposals and arguments when putting forth its own arguments and counter-arguments to persuade the Panel.

b. Merits of Proposals

In 2012, the parties sought the assistance of the Panel in order to resolve articles remaining in dispute over their successor CBA in Case No. 2012 FSIP 54. The Panel asserted jurisdiction and directed the parties to resume negotiations with the assistance of a private factfinder. The factfinder assisted the parties in resolving many of the issues in dispute, but telework was one of the Articles that remained in dispute. As a result, the Panel issued a Show Cause Order, directing the Union (who would not except the factfinder's recommendation) to explain why the Panel should not adopt the factfinder's recommendation for telework. The Panel found that the Union failed to show cause why the factfinder's recommendations for telework should not be adopted and, therefore, adopted his recommendations in their entirety. Since this time, the parties have operated largely under the factfinder's recommendation for telework.

Under the current CBA, a Judge's ability to telework is determined by the number of hearings he or she schedules. The Agency provided a sworn statement from its Chief Administrative Law Judge who indicated that using hearings scheduled as a metric for telework has been problematic. In this respect, he stated that an ALJ may postpone or cancel hearings once his or her telework has been scheduled in an effort to telework more frequently, which results in significant hearing delays. The Agency did not, however, provide any data to support whether this is occurring and the frequency of such events. Nonetheless, the Agency did demonstrate that the current CBA language tying telework to scheduling hearings has caused a significant amount of litigation and is not reflective of the Agency's regulations on scheduling hearings. Therefore, a new approach to telework eligibility is warranted.

At SSA, it is important that the Agency has discretion and flexibility, since it must ensure that the American public is receiving timely decisions from its Judges through the Social Security Disability Program. Therefore, the Agency should have the ability to determine whether a Judge is eligible to telework and the number of days that the Judge is permitted to telework. Under the current Telework Program, Judges are permitted up to eight calendar days of telework per month after hearings have been scheduled. The Agency now proposes that it "will determine whether a Judge is eligible to telework and the number of days eligible Judges are permitted to telework." The Union argued that the Agency's proposals waive the Union's bargaining rights under the Statute. The Agency clarified to the Panel's Staff and the Union that it plans to permit Judges to continue to telework up to eight calendar days per month, but consistent with its Proposal 43, once it makes a change, it will negotiate with the Union. To the extent that there was a question whether the Agency's proposal waived the Union's statutory rights, there is none now.

The Union further argued that the Agency's proposal, which prohibits employees from teleworking if, for example, they have failed to comply with a policy directive is contrary to 5 CFR § 930.206. However, the Agency's proposal does not appear to violate 5 CFR § 930.206, because the Agency is not creating or applying a performance appraisal program for ALJs. Instead, it's imposing restrictions on ALJs ability to telework. Accordingly, the Panel will impose the Agency's Proposals 43, 44, 45, 46, 47, 48, and 50, which permit the Agency discretion to determine whether employees are entitled to telework.

As to permanent changes to the program, the Telework Enhancement Act and the Statute intends for changes to the program that are more than *de minimis* are to be negotiated with the Union. Therefore, the Panel will impose the Union's language for Proposal 40, which permits the Agency to make changes, consistent with the rights established under the Telework Article, and if not covered by the contract, the Agency must negotiate with the Union, when applicable, in accordance with the Statute.

The Agency should be permitted managerial discretion to authorize temporary changes in telework when needed. Therefore, the Agency's Proposals 42, 51, and 60 will be adopted by the Panel. Similarly, the Agency should have the authority to determine the standards of conduct that Judges will follow when teleworking. As such, the Panel will impose the Agency's Proposal 52. The Agency should also have the ability to approve unscheduled telework prior to the employee teleworking under the Agency's Proposal 42, but the employee should have the ability to request leave if he or she unable to return to their duty station under the Union's Proposal 59.

The Agency proposed several requirements that employees must follow when teleworking, such as using instant messaging to ensure that this technology accurately reflects their work status and keeping a written account of the work performed each day while teleworking.[47] The Union takes exception over most of these proposals based on those requirements being contrary to the Telework Act.[48] Although the Agency indicated that these requirements are required for all employees, the Agency's justification for these proposals is

47 Proposals 53, 55, 56, and 62.

48 5 U.S.C. § 6503(a)(3), which states that agencies must treat teleworks and nonteleworkers the same for purposes of work requirements or other acts involving managerial discretion.

lacking. The Agency merely stated that these requirements are to facilitate communication between Judges and other SSA employees. However, it's not clear why the Agency needs employees and managers to go to such great lengths to ensure that they are communicating. Further, these requirements would arguably create more work for both managers and employees. Therefore, the Panel will require the Agency to withdraw Proposals 55, 56, and 66, but impose the Union's Proposal 53, since it has agreed to Judges being required to provide electronic notification to their supervisor at the beginning and/or end of the workday through the WebTA program. As a result of requiring the Agency to withdraw its proposals, it is unnecessary to address the Union's legal arguments.

Next, the Agency is concerned over having a multiple ADSs and over having ADSs more than two hours away from the employee's ODS.[49] However, under the Union's proposal, management maintains the right to approve any and all duty stations. Further, there could be situations that warrant an individual employee's duty station to be located more than two hours away. The Union's proposal provides management the flexibility to approve those requests on a case-by-case basis. Therefore, the Agency can still determine under the Union's proposal that one duty station is appropriate. As such, the Panel adopts the Union's Proposal 41.

Similarly, under situations where the ODS is closed and the ADS is unsafe to telework, an employee may be permitted weather and safety leave in accordance with the Administrative Leave Act of 2016.[50] The Agency's Proposals 54 and 61 articulate that employees are expected to telework when there is a hazardous weather or safety event, but if they are unable to, they may be entitled to leave under Article 18. Article 18 may or may not include all the appropriate circumstances articulated under the weather and safety leave regulations. Therefore, the Panel will require the parties to add the following language to Proposals 54 and 61: "Judges may be granted leave in accordance with law, rule, regulation, and negotiated agreements."

Finally, the Agency seeks to potentially require employees who telework to share a workspace when they work at their duty station.[51] The Union argues that this violates the Telework Enhancement Act because it treats teleworkers differently than nonteleworkers. The Union's argument is without merit. The purpose of the Telework Act is to save the federal government money by reducing real estate costs. It is reasonable that employees who are eligible to telework may have to share an office in order to enjoy the benefit of teleworking. It is also equally reasonable to require employees to respond to voicemails and emails in a timely manner, and be accessible by telephone during working hours, as that is a requirement that certainly applies to teleworkers and nonteleworkers.[52] Therefore, the Panel will impose the Agency's Proposals 58 and 63.

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49 Proposal 41.
50 5 U.S. Code § 6329a.
51 Proposal 63.
52 Proposals 57 and 58.

7. Article 18 – Leave

I. Agency Position

The Agency states that the parties' dispute over WebTA concerns the Agency's bargaining obligations if it implements a successor time and attendance program. Under the Union's proposal, the Agency states that it would have to bargain procedures and appropriate arrangements, even if the changes in a new program were *de minimis*. The Agency argues that its duty to bargain depends on a variety of factors, such as whether the change is greater than *de minimis*. The Agency states that its proposal is simply to strike any reference to a potential successor WebTA program, but the Agency would bargain over changes to the program to extent required by the Statute.

Concerning requests for unanticipated leave when the HOCALJ or Acting HOCALJ is not available, the Agency proposes that the Judge must attempt to contact another member of the hearing office management (e.g., Hearing Office Director or Group Supervisor), whereas the Union proposes that the Judge can email or leave a voicemail for the HOCALJ or Acting if neither are available. The Agency states that the problem with the Union's proposal is that in situations where the Judge requesting unanticipated leave has scheduled hearings on that day or the next day, an email or voicemail left with the HOCALJ or Acting HOCALJ may not be received timely. With the Agency's proposal, another member of management could solicit for hearing coverage, and/or notify claimants and representatives that hearings need to be cancelled. This process simply requires the Judge to call into the office and ask for a manager on duty. The Agency's goal is not to create a burden for the ALJ who needs to take unanticipated leave, but merely to ensure that management is immediately on notice of such situations and can respond accordingly to make accommodations for claimants who may have been waiting hundreds of days for their scheduled hearing.

Concerning extended annual leave requests of one week or more, and for days immediately before or after federal holidays, the Agency proposes a procedure with two six-month request periods. Judges would submit these leave requests by the end of February for April through September and by the end of August for October through March. Under current SSA regulations, the Agency must provide claimants with at least 75 days advanced notice of a hearing in most instances. In order to appropriately schedule hearings months in advance, the Agency states that it must be aware of any extended or holiday-related leave.

The Union proposes that Judges will not be penalized by requiring them to schedule more cases before or after their leave, scheduling metrics will be adjusted to account for leave, and Judges will be compensated if required to "make up" cases. The Agency states that the Panel should not entertain arguments that impinge on the Agency's responsibilities regarding the assignment of work and quality, quantity, and timeliness expectations. However, the Agency did agree to adhere to applicable laws and regulations regarding leave for Veterans and members of the military by offering language that would not penalize a Judge for military leave by excusing that Judge from having to schedule additional cases before of after the leave is taken to make up for the cases not scheduled while on the leave.

Finally, consistent with advanced annual leave provisions in the two other bargaining unit contracts, the Agency proposes that Judges may be granted advanced annual leave for the lesser of 80 hours or the amount of annual leave a Judge would accrue the remainder of the leave year. The Agency states that under 5 U.S.C. § 6302(d),"[a]t its discretion, an agency may advance annual leave to an employee in an amount not to exceed the amount the employee would accrue within the leave year." Given that the Statute provides for agency discretion, the Agency argues that its proposal is consistent with law and does not amount to a waiver of the Union's rights.

II. Union Position

The Union argues that the Agency seeks to waive the Union's right to bargain over procedures and appropriate arrangements relating to the implementation of a new WebTA system. The Union states that any new electronic program may have adverse effects on bargaining unit employees, which the Union would seek to mitigate through collective bargaining. Therefore, the Union's proposal provides it with a right to bargain over any successor electronic programs that the Agency implements.

The Union states that it is important for Judges to know how to request leave properly. Therefore, the Union proposes a reasonable alternative system when the HOCALJ or Acting HOCALJ is unavailable, i.e., utilizing voicemail or email. The Union states that email and voicemail are heavily used systems for employees communicating with their supervisors. They will put a supervisor on notice that an employee is requesting leave. The Union states that making multiple phone calls to other supervisors, who will have to reach the HOCALJ or Acting HOCALJ anyway, is less efficient. If the Judge's leave status has not been clarified by the close of business, the Union proposes that the Agency may charge that Judge absent without leave.

Next, the Union states that annual and sick leave is governed by applicable law and regulation. Therefore, the Union made a proposal which references that a "Judge may be granted advanced annual leave pursuant to applicable law and regulations" to alert employees and supervisors how to handle advanced annual and sick leave requests. The Union argues that the Agency has no authority under law and regulation to place greater restrictions on the use and availability of advanced leave than those existing in the governing law and regulations. The Union states that the Agency's advanced leave proposal arbitrarily sets dates when leave must be requested irrespective of hearing calendars.

The Union also asserts that the Agency's advanced leave proposal, which schedules leave around hearing calendars, is an attempt to make all CBAs of all three bargaining units the same. However, the Union states that the Judges bargaining unit is unique based on its judicial function. Under the Union's proposal, Judges will be notified to submit requests for extended annual leave of one calendar week or more in conjunction with their hearing calendars. Such requests must be submitted in WebTA or a successor program to the appropriate leave approving official. The Union's proposal acknowledges that leave must fit in with hearing schedules and not that hearing schedules must fit in with leave. Under the Union's proposal, the Agency still retains the right to decline to approve leave requested using the Union's proposal.

Both parties agree that a Judge who takes military leave will not be penalized for taking military leave by being required to schedule additional cases before or after military leave is taken. Therefore, the Union proposes that same language for non-military Judges. The Union claims that the Agency should not require Judges to schedule additional cases to make up for the time spent on leave. Otherwise, the Union states it penalizes Judges for using leave.

III. Conclusion

The parties currently utilize a program to administer Judges' time and attendance: WebTA. The parties agree that Judges will submit requests for leave using WebTA; however, the Union would like language in the CBA which indicates that the Agency will negotiate over the procedures and arrangements if a new time and attendance program is implemented.[53] The Agency stated that it will negotiate over changes to the program to the extent that those changes are more than *de minimis*. Both parties agree there may be an obligation to negotiate over future changes to the WebTA program. Therefore, the Panel will modify the Union's Proposal 64 by including language which indicates the Agency will negotiate over a successor WebTA program "to the extent required by law."

Next, the parties disagree over the method by which Judges will submit requests for unanticipated leave.[54] The Agency's proposals are the better option here, as it allows the Judge to contact, by any means necessary, a supervisor to submit a request for unanticipated leave. The Agency has presented a valid explanation for opposing the Union's option – an email or voicemail may not be received by the HOCALJ or Acting HOCALJ in timely manner to reschedule hearings on the day the Judge requests unscheduled leave. Judges annually decide over 600,000 disability claims, and as of 2017, over 1.1 million claimants have been waiting for hearings, thousands of whom have been waiting over two years for their case to be heard. The focus here should be on the Agency's mission, ensuring that individuals claiming disability benefits are provided their due process rights in a timely manner. The Agency's proposed procedure for unanticipated leave requests in Proposals 65 and 66 best accomplishes this goal.

If a Judge's leave request has not been clarified by the close of business, the Agency proposes that the status will automatically be recorded as absent without leave; whereas, the Union proposes that the absence *may* be charged absent without leave.[55] The Union's proposal does not prohibit the Agency from finding that the employee should be charged absent without leave, but permits managerial discretion for situations that may arise beyond the employee's control, i.e., emergencies. Thus, the Panel will adopt the Union's Proposal 67, but the parties will remove the notification aspect of the proposal because it is addressed below.

Turning to extended annual leave requests of one week or more, and for days immediately prior to and following a federal holiday, the Agency would like Judges to submit leave requests by the end of February for April through September and by the end of August for October through March.[56] The Agency offered this leave procedure in an effort to ensure that it

53 Proposal 64.
54 Proposals 65 and 66.
55 Proposal 67.
56 Proposal 68.

can consider all leave requests and schedule hearings in a timely manner, since in most cases, the Agency must provide claimants at least 75 days advanced notice of a hearing pursuant to SSA regulations. The Union claims that the current system, which schedules leave around hearing calendars is efficient, but does not provide any rationale for how the system currently works or why the Agency's proposal does not work. Conversely, the Agency explained the need to change the current system. The Judges' use of leave should not interfere with the Agency's mission and the best way to address that is scheduling leave as far in advance as possible. This will ensure that the employees can take the leave that they want and the Agency can timely schedule hearings. As such, the Panel adopts the Agency's Proposal 68.

The Agency agreed that a Judge who takes military leave will not be penalized by being required to schedule additional cases before or after military leave is taken in order to make up for cases not scheduled while on leave.[57] However, the Agency did not agree to the same language for annual and sick leave.[58] For annual and sick leave, employees may choose when to take that leave. Conversely for military leave, employees are ordered to appear. While the Union would like to ensure that the Agency does not assign additional cases before or after leave is taken, that language goes too far and may interfere with management's right to assign work under the Statute. As such, the Panel requires the Union to withdraw its Proposal 69 and imposes the Agency's Proposal 72.

If a Judge requests advanced annual leave, the Agency proposed that the request may be granted for the lesser of 80 hours, or the amount of annual leave a Judge would accrue the remainder of the leave year.[59] The Agency also placed limits on a Judge's ability to request advanced leave based on his or her disciplinary record. As the Agency correctly indicates, it has the discretion to grant advanced annual leave requests to an employee. That allowance comes with limitations under 5 U.S.C. § 6302(d) to an amount that would not exceed what the employee would accrue in a year. The Union argued that the Agency's proposal is contrary to law, but it did not provide any authority to support this assertion. As such, the Agency's Proposal 70 is the better option because it apprises employees of the amount of leave permitted and the circumstances under which leave may be authorized.

Finally, for advanced sick leave requests, the Union requests that the Agency consider the "criteria described in paragraphs A and B of this subsection."[60] However, without explaining what those subsections mean, the Panel cannot impose the Union's proposal. Instead, the Panel will impose the Agency's Proposal 71, which achieves the same goal as the Union's proffered language, but ensures that sick leave requests are granted in accordance with law, regulations, and Agency policy. Thus, the Agency's proposal is adopted here.

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57 Proposal 72.
58 Proposal 69.
59 Proposal 70.
60 Proposal 71.

8. Article 20 – Reassignments and Hardships

I. Agency Position

The Agency states that the parties have agreed on most of the provisions within this Article. However, the parties disagree as to whether the Agency may exercise discretion in filling a vacancy with a reassignment or a new hire. Under the Union's proposal, the Agency claims that utilizing the reassignment process for every vacancy will be time consuming and could prevent timely hiring. Due to the uncertain nature of the Agency's yearly budget, the Agency argues that there are times when it is provided a short window to hire new Judges. Under the Union's proposal, once an initial vacancy is filled with a reassignment, the Agency would then need to solicit for the vacancy created by the reassigned Judge, which would result in another vacancy, and so on in a cascading manner. The Agency states that requiring it to exhaust all reassignments prior to filling a vacancy may take months and delay SSA's ability to hire new Judges.

The Agency also seeks to limit the number of compassion assignments for employees. Compassion assignments are granted for employees in need of a transfer due to, for example, a health-related reason. Pursuant to Agency regulations implementing the hearing process under the Social Security Act, the Agency states that Judge's hearings are scheduled 75 to 120 days in advance. However, the Agency states that when a Judge is assigned to another location under the compassion assignment program, that Judge is unavailable to handle already scheduled hearings resulting in: (1) delayed hearings for claimants who may have been waiting hundreds of days for their scheduled hearing; (2) lost hearing room space with attendant costs for hearing recording staff, guards, and expert witnesses; and (3) administrative burdens involved in rescheduling canceled hearings. Therefore, the Agency would like to limit the total number of compassion assignments to no more than one per year and it is against providing the Union information pertaining to these assignments, as it states that information may violate an individual's right to privacy.

II. Union Position

The Union states that the FLRA has long held that if all employees are equally qualified for a position, then a union may negotiate a procedure for how positions are filled.[61] The Union argues that its proposed language for reassignments does just that. Under the Union's proposal, the Agency must first provide bargaining unit employees consideration for an open position and if there are no eligible Judges who wish to transfer, it will then open the position to new appointments. Absent such an approach, the Union states that the Agency could easily skip over existing Judges every time and just fill all outstanding open positions with new hires. When hired, the Union contends that Judges are told that they will be eligible to transfer. The Union argues that the Agency's proposal could lead to senior Judges having no ability to transfer to another position. The Union states that the Agency's proposal may lead to favoritism, which is a prohibited personnel practice under 5 U.S.C. § 2302(b)(6).[62]

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61 *See NTEU and Dept. of Treasury, IRS*. 14 FLRA 243 (1984).

62 That section states, "[a]n agency official shall not give an unauthorized advantage in order to improve or injure the employment prospects of any person."

The Union next states that hardship details (called compassion assignments) should be permitted more than once per year. To support its position, the Union provided several statements from ALJs who have successfully used the compassion assignment program. The Union argues that a "one hardship per judge" policy as proposed is unnecessary, considering the small number of hardship details.[63] The Union is also concerned that compassion assignments could be abused by the Agency to give preference to favorite employees and not be used as intended in the CBA. Therefore, the Union states that having the list regularly provided to the Union, so that all eligible employees will receive proper consideration acts as a safeguard. Rather than go through the time-consuming process of requesting the information under the Statute, the Union proposes receiving this information contractually.

Finally, the Union is proposing that the Agency make a final decision on an employee's reprimand before the Agency may use a letter of reprimand as the basis for denying eligibility for a reassignment. Therefore, the Union is proposing that there should be no prohibition on a reassignment until after adjudication of any appeal, or if no appeal is filed. The Union states the reason for this is because the letter of reprimand may be withdrawn through the appeal process. Under the Agency's proposed language, the issuance of a reprimand even if later withdrawn will still be used as the basis for denying eligibility for a reassignment, and the Agency proposes that the employee must wait 18 months to apply for transfer.

The Union similarly contends that penalizing a Judge who has received a counseling, as the Agency proposes, for sick leave abuse is unfair. The Union states that the counseling could be utilized solely to block a disfavored Judge next eligible for a desirable location, which would be a prohibited personnel practice. The Union also states that having a policy that a workload or policy directive may block a Judge from reassignment could be used to block one Judge in favor of another. The Union contends that such a standard lends itself to a prohibited personnel practice.

III. Conclusion

Under the Reassignments and Hardships Article, the parties disagree over several proposals determining whether the Agency will be required to provide the bargaining unit employees consideration over an open Judge position prior to filling vacancies with new appointments.[64] In support of its position, the Agency demonstrated that requiring it to first seek out bargaining unit employee interest every time a position opens up could impede its ability to hire in an efficient manner. In this respect, the Agency presented an affidavit from the Deputy Chief Administrative Law Judge of OHO, who oversees the review and handling of ALJ reassignment and compassion assignment requests. When determining vacancies and workload needs, he stated that the Agency must consider reassignments, which has historically taken two months to exhaust the reassignment process and has delayed the Agency's ability to hire new Judges. Rather than make it a mandatory requirement, the better approach is to permit the Agency flexibility and discretion to determine whether to only solicit bargaining unit employee interest in the position, or whether to open the position up to outside applicants, the latter of

63 There were 57 compassion assignments over the past three years.
64 Proposal 73, 74, 78, and 79.

which would still permit bargaining unit employees to apply. Thus, the Agency's Proposals 73, 74, 78, and 79 are adopted by the Panel.

The Union presented several affidavits and statements from Judges who all indicated the importance of the Agency's current transfer and compassion assignment program. The Panel found several of the statements compelling. The Agency argued that compassion assignments of ALJs have resulted in delays of hearings and increased costs due to the rescheduling of hearings. Based on the data provided by the Union, there have only been a limited number of compassion reassignments granted in the past three years: 57 out of approximately 1,200 bargaining unit employees. The delays experienced by the Agency cannot be too substantial compared to the significant benefits compassion assignments have offered Judges in need of a transfer. Based on the affidavits provided by the Union, the Panel adopts the Union's Proposal 81, which will permit employees to obtain more than one compassion reassignment per year, but will limit the number of compassion assignments based on the same issue to one per year.[65]

The next area of disagreement is over whether the Agency will provide a list of all compassion assignment requests and the action taken, if any, to the Union President.[66] The Deputy Chief ALJ stated that he thinks that providing this information would make SSA responsible for the dissemination of personal information related to the health of the ALJ or family member and result in a violation of the individual's privacy rights. However, the Union indicated that it is only asking for the names of individuals who were awarded compassion assignments, not any other information which may interfere with their privacy rights. The Union argued that having a list of the compassion assignment requests and actions taken will ensure that the Agency does not unfairly provide these opportunities based on favoritism. The Union, however, did not present supporting evidence indicating that the Agency exhibited favoritism in this process. As such, the Panel will strike the Union's Proposal 80 and advises the Union that it may seek out this information by filing a request under the Statute.

Finally, the last set of proposals deal with the eligibility requirements to request a reassignment or a transfer.[67] If an employee has failed to comply with a workload or policy directive, been issued a reprimand, has been counseled, or is currently on a sick leave restriction, then that employee should not enjoy privileges provided to other employees who conform to the rules, regulations, and policies of the Agency. Otherwise, under the Union's proposal, an employee who received a reprimand may seek and obtain a transfer from the Agency only to later find out that the reprimand has been upheld after already moving to the new location. At that point, the Agency and the employee have incurred a significant amount of costs transferring the employee to the new location. Both parties would then have to spend additional resources returning the employee to his or her original location. This can all be avoided by adopting the Agency's Proposals 75, 76, and 77. If it is determined that the reprimand is overturned, then the employee can apply for a transfer at that time. The Union has not produced any evidence demonstrating that the Agency has unlawfully placed reassignment restrictions on employees. As such, the Panel adopts the Agency's three proposals.

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65 Proposal 81.
66 Proposal 80.
67 Proposals 75, 76, and 77.

9. Article 29 – Facilities and Services

I. Union Position

In its proposals, the Union would like the Agency to agree to language that requires it to bargain when the Agency opens, moves, relocates, consolidates, or renovates an office. The Union argues that the Panel has recognized the Union's right not to waive its right to bargain over these matters.[68] The Union also states that the parties currently have two pending arbitrations related to Article 29 and an additional arbitrator's decision before the FLRA alleging that the Agency engaged in bad faith bargaining. Therefore, the Union states it's important for the Panel to impose its proposal on this topic.

Regarding office size, the Union states that its proposal does not specifically prescribe the exact size of ALJs' offices, but establishes what the Agency should consider when determining the size of offices for judges. The Union states that the Agency has begun implementing the 120-square foot office size standard in the Los Angeles Downtown Hearing Office, the Syracuse Satellite Hearing Office, and the Atlanta Downtown Hearing Office, which are subject to pending arbitrations. The Union requests that the Panel withdraw jurisdiction over this matter, so that the parties can negotiate this ongoing dispute.

For furniture within each office, the Union states that the furniture proposed has been the standard agreed to for Judges for over six years and is contained in the parties' current CBA. The Union asserts that each office should have an American flag, which has been the standard since 2001. The Union states that the HOCALJ should be the management official that determines whether a Judge can bring in a personally-owned chair to use in their office, whereas the Agency states generally that it should be the "Agency." The Union contends that the HOCALJ is the obvious person in the hearing office to address these matters.

To accommodate a Judge when relocating to a new office, the Union proposes to keep current language in place that will allow a Judge up to two workdays of duty time to move offices. The Union proposes that Judges with disabilities and other health conditions will receive assistance in moving their items in an office move. The Union states that such assistance for Judges with disabilities is required by law and should be agreed to by the Agency.

The Union would like to roll over language from the current contract that permits management and employees at locations throughout the country to have the ability to reach agreement on the use of hearing rooms, since the local parties are the ones that are most familiar with each hearing room, Judges should have an opportunity to set-up its layout, subject to approval of management. Within the hearing rooms, the Union requests that the Agency provide "high-backed" chairs in each hearing room, subject to budgetary constraints. The Union states that these chairs accomplish two goals: it enhances the authority of the Judge by creating the appearance of a formal judicial proceeding. Second, it assists the Judge in maintaining judicial decorum in hearings.

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68 *See HHS and National Treasury Employees Union*, 2018 FSIP 077 (2018).

The Union also asks for "high adjustment tables/benches" in the hearing rooms. The Union states that a table/bench too high or too low impedes the conduct of a hearing and lessens the productivity of the judge. The Union contends that the bargaining unit has a large percentage of women who on average are shorter than men. As such, adjustable benches will provide greater functionality for all Judges. The Union also asks for "railings" of 2 ½ feet, hung down from the top of the Judge's bench in each hearing room to create the image of a serious judicial proceeding, which assists the Judge in maintaining judicial decorum in the hearing room.

Next, the Union proposes some measures for the Agency to implement to ensure the wellbeing of its Judges because safety is of paramount interest to the Union. The Union asks to have "panic buttons" in hearing rooms. The Union states that this is an arrangement which will provide a level of protection to a Judge who is in a potentially dangerous situation. Once pressed, the panic button will alert the Federal Protective Service and onsite security. The Union also proposes that each door to a Judge's office will have locks on it for the safety of the Judges. The Union states that it is standard for private offices to have locking doors; many offices already have locks and the cost to add additional ones would be nominal. Similarly, the Union is seeking to ensure a minimal level of security for the bargaining unit by requiring the Agency to install "intrusion detection security systems and duress alarms." Relatedly, the Union requests that the Agency ensure the buildings, which are leased, meet fire codes.

The final issue in dispute is parking. The Union states that there is no need to change the existing parking arrangement, which provides free parking to Judges. The Union argues that employees rely on their current parking situation. Therefore, it states that the arrangement should continue absent a lease expiring, office renovation, or office relocation.

II. Agency Position

The Agency states that the parties initially disagreed over bargaining rights when the Agency opens, moves, relocates, expands, consolidates or renovates an office. However, the Agency states that it has withdrawn its proposal that waives the Union's right to bargain over "space actions." Relating to office size, the Agency contends that office space rent is a large portion of the Agency's operating budget. Accordingly, it states that the size of offices should be determined by the need to accomplish the duties of a position, and not by "rank" as the Union asserts. The Agency determined that instead of the former 200 square feet standard for Judges' offices, 120 sq. ft. is sufficient. Prior to implementing this change, the Agency asserts that the parties bargained this matter in August of 2018. That bargaining, which led to the Agency implementing its last best offer is the subject of a pending appeal of an arbitration award with the Authority. Rather than addressing office size in the CBA, the Agency's position is that the parties should abide by the outcome of the pending Authority decision, subject to any subsequent appeals.

Turning to furniture, the Agency has developed a furniture design package tailored to the 120 sq. ft. office. The package includes a desk; adjustable table; visitor chairs; ergonomic chairs; a bookcase; a credenza; a lamp; and computer monitor. The Agency contends that detailing the furniture and accessories in a CBA leads to unnecessary confusion and redundancy and does not allow the Agency to make informed and timely choices with taxpayer dollars.

The last proposal related to office moves concerns the amount of "duty time" Judges will get to "pack and unpack" personal materials and files when an office is subject to a move. While the parties agree to language concerning a "reasonable amount of duty time," the Union's proposal specifies that Judges receive "up to two work days" of duty time, while the Agency's proposal does not specify an amount of time. The Agency states that its proposal preserves management's discretion to make such a determination on a case-by-case basis depending on the nature of the space move and based on the amount of materials and files a particular Judge has to move.

Finally, regarding the Union's security proposals, the Agency contends that those proposals may raise negotiability concerns. As such, the Agency states that the proposals are unnecessary. On the merits, the Agency states that its security measures governing its more than 1,300 field and headquarters locations nationwide, are reasonable and have proven effective.

III. Conclusion

There are five main disagreements in the parties' last Article: (1) office moves; (2) office size and furniture; (3) hearing room configuration; (4) security; and (5) parking. When the Agency opens, moves, relocates, expands, consolidates or renovates an office, the Union proposes that the Agency provide it with notice and an opportunity to bargain.[69] In its statement of position, the Agency asserted that it was withdrawing its proposal over the Union waiving its right to bargain over space actions. As such, the Panel will impose the Union's proposals relating to bargaining over office moves: Proposals 82 and 86.

If a Judge needs to move offices, the Union would like that Judge to receive up to two days of duty time to move offices, but the Agency proposes that Judges will receive a "reasonable amount of duty time."[70] The Union did not provide any rationale for the need to include the specific number of days a Judge might be permitted to receive duty time to move offices. Conversely, the Agency justified its proposal, which will allow it discretion to determine on a case-by-case basis the amount of time needed to move. The Agency's proposal may also permit Judges to receive more than the two days the Union is requesting. However, what's not clear is the Agency's refusal to include language that it will provide assistance to Judges with disabilities or other physical conditions when moving.[71] Therefore, the Panel will impose the Agency's Proposal 87 concerning duty time permitted to move offices and the Union's Proposal 88 is imposed, which will permit Judges with disabilities assistance, if needed.

Next, the parties disagree over the size of private offices for Judges.[72] The Union requests that the Panel withdraw its jurisdiction over this matter because it is subject to pending arbitrations. Similarly, the Agency argued that rather than addressing this issue, the parties should abide by the outcome of those pending arbitrations. Both parties have essentially stated that they do not want the Panel to assert jurisdiction over this matter. Because both parties do

69 Proposal 82 and 86.
70 Proposal 87.
71 Proposal 88.
72 Proposal 85.

not appear to want the Panel to resolve this matter, the Panel will grant the parties' request and withdraw its jurisdiction over this topic.

Moving to furniture within each ALJ office, the Union proposes that Judges are provided one executive style desk of unitized wood; one traditional high-backed leather chair or suitable alternative; a computer table and ergonomic chair; a table, bookcase, locking file cabinet; U.S flag; and two visitor chairs.[73] The Agency offers no such language, and instead it would like to abide by a furniture package developed by its Facilities Design Team, which will provide Judges furniture for a 120-squarte foot office. The Union also contends that the HOCALJ should be the Agency official to approve Judges bringing in personally-owned chairs, whereas, the Agency states it should be the "Agency."[74] Because the parties requested that the Panel withdraw its jurisdiction over office size, the Panel will also withdraw jurisdiction over these proposals since the furniture design of an office will be dependent on the size of an office.

The next topic of disagreement is over the use and configuration of hearing rooms. The Union would like local management and its Judges to be able to configure the hearing rooms.[75] The Union would also like the Agency to provide a "traditional high-backed leather style chair in each hearing room, subject to budgetary constraints."[76] The Union also requested "railings of 2 ½ feet hung down from the top of the bench in each hearing room"[77] and "high adjustment tables/benches"[78] in the hearing rooms for materials and computer equipment. The Panel will impose the Agency's Proposals 92, 93, 94, and 96, because it is less efficient to have several agreements across the country over the design and configuration of a hearing room compared to one master CBA.

For security, the Union argued that intrusion detection systems and duress alarms must be installed and monitored;[79] each door to the Judges office must have locks;[80] panic buttons in the hearing rooms are to alert Federal Protective Service and onsite security;[81] and SSA offices must be compliant with applicable local and state fire codes.[82] The Union's concerns about Judges' safety are laudable and the Agency should want to ensure that it's Judges are safe, which it stated it is committed to doing. However, the Union's proposals may interfere with management's right to determine its internal security under section 7106(a)(1) of the Statute. As such, the Panel requires the Union to withdraw its proposals over security.

Lastly, the parties agree that the current parking arrangement should remain in place.[83] However, the Agency's Proposal 97 better provides it flexibility and discretion needed make

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73 Proposal 89.
74 Proposal 90.
75 Proposal 92.
76 Proposal 93
77 Proposal 94
78 Proposal 96
79 Proposal 84
80 Proposal 91.
81 Proposal 95
82 Proposal 83.
83 Proposal 97.

changes that may be necessary to that arrangement if an office lease is renewed or expires. As such, the Panel imposes the Agency's Proposal 97.

ORDER

Pursuant to the authority vested in the Federal Service Impasses 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

April 15, 2020
Washington, D.C.

ATTACHMENTS

- Parties' Proposals

SSA Summary of Outstanding Proposals

Yellow Highlighting indicates disputed language // **Bold** indicates proposed new/added language // ~~Strikethroughs~~ indicate language proposed to be removed

ARTICLE 1 Duration and Termination					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 04/12/19- Union submitted Union 2 • 04/18/19- Agency submitted Management 2 • 06/17/19-06/20/19- Concentrated Mediation • 06/20/19- Agency submitted Management FINAL/LBO • 06/20/19- Union submitted Union FINAL/LBO					
	Agency Proposed Language		**Union Proposed Language**		**Explanation**
1	L.5-8	Section 1 – **Effective Date** This Agreement will be implemented and become effective per the Parties' ~~February 4, 2010~~ **October 18, 2018**, Ground Rules MOU.	L.5-9	Section 1 – **Effective Date** This Agreement will be implemented and become effective per the Parties' ~~February 4, 2010~~ **October 18, 2018**, Ground Rules MOU **subject to the execution of the parties' collective bargaining agreement (CBA).**	The Union seeks to include language requiring execution of the CBA by the Parties prior to becoming effective. The Agency rejects this language because per the Ground Rules as cited, the CBA may become effective upon completion of Agency Head review if one of the Parties declines to execute.
2	L.10-17	This Agreement shall remain in effect for a period of ~~four (4)~~ **seven** years from its effective date and shall automatically renew from year to year thereafter except where changes in the law, rule, or regulation mandate modification of the agreement. In addition, the Parties may extend for a longer period by mutual consent. ~~However, either Party may give notice to the other Party, in writing, at least sixty (60) days, but not more than one-hundred-five (105) days prior to the expiration date of its intention to reopen, amend, modify, or terminate this agreement.~~	L.10-21	This Agreement shall remain in effect for a period of ~~four (4)~~ **three** years **pursuant to 5 U.S.C. 7111(f)(3)** from its effective date and shall automatically renew from year to year thereafter except where changes in the law, rule, or regulation mandate modification of the agreement. In addition, the Parties may extend for a longer period by mutual consent. However, either Party may give notice to the other Party, in writing, at least sixty (60) days, but not more than one-hundred-five (105) days prior to the expiration date of its intention to reopen, amend, modify, or terminate this agreement. **Future term contract negotiations will be done via technology as determined by the Agency, and each negotiation team will be only have four members, unless mutually agreed to, in order to reduce costs.**	There is a dispute regarding the duration of the CBA, with the Agency proposing seven years and the Union proposing three years. The Agency is proposing relocation of the notice language for CBA changes to later in the Article. The Union is proposing keeping the notice as is with the addition of language dictating future CBA negotiations by technology and limiting the number of negotiators.

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3	L.19-27	**Section 3 – Termination Notice and Ground Rules Negotiations** **However, either Party may give written or electronic notice of its intent to add, amend, reopen, modify or terminate existing Articles of this Agreement not more than one hundred ~~twenty~~ five or less than ~~ninety~~ sixty calendar days prior to the expiration date.** Ground rule**s** negotiations will then begin no later than forty-five ~~(45)~~ calendar days after receipt of the notice provided by either Party. Such ground rule negotiations shall be conducted in accordance with Article 2, Section **4** ~~5~~, as to number of bargaining days, number of negotiators, payment of travel and per diem, and location.	L.22-27	**Section 3 – Termination Notice and Ground Rules Negotiations** Ground rule**s** negotiations will then begin no later than forty-five ~~(45)~~ calendar days after receipt of the notice provided by either Party. Such ground rule negotiations shall be conducted in accordance with Article 2, ~~Section 5,~~ as to number of bargaining days, number of negotiators, payment of travel and per diem, and location.	The Agency proposes relocating the notice provision of CBA changes to this portion of the Article.
4	Sec.5 L. 38-49	Unless otherwise specifically preserved in this Agreement, this Agreement supersedes all prior Memoranda of Understanding, Supplemental Agreements, or any other written agreements agreed to by the Parties prior to the ~~Employer~~ **Agency's** ~~November 30, 2009~~ **June 18, 2018**, notice to terminate such agreements, and such agreements shall cease to have effect and control. In order to change any Memoranda of Understanding, Supplemental Agreements, or any other written agreements agreed to by the Parties between ~~November 30, 2009~~ **June 18, 2018** (~~Employer~~ **Agency's** notice date) and the effective date of this Agreement and that are not covered by this Agreement (as defined by **the Federal Labor Relations Authority** (FLRA) case law), the ~~Employer~~ **Agency** shall provide notice and, upon	Sec.4 L.33-57	~~Unless otherwise specifically preserved in this Agreement, this Agreement supersedes all prior Memoranda of Understanding, Supplemental Agreements, or any other written agreements agreed to by the Parties prior to the Employer November 30, 2009, notice to terminate such agreements, and such agreements shall cease to have effect and control. In order to change any Memoranda of Understanding, Supplemental Agreements, or any other written agreements agreed to by the Parties between November 30, 2009 (Employer notice date) and the effective date of this Agreement and that are not covered by this Agreement (as defined by (FLRA) case law), the Employer shall provide notice and, upon request, bargain with the AALJ to the extent required by 5 U.S.C. Chapter 71.~~ This Agreement supersedes all past	The expired CBA provides that it supersedes all prior MOUs, Supplemental Agreements, or any other written agreements agreed to by the Parties prior to SSA's notice to terminate the expired CBA. The Agency proposes maintaining this language, while the Union proposes language indicating that specific MOUs remain in effect.

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		request, bargain with the AALJ to the extent required by 5 U.S.C. Chapter 71. This Agreement supersedes all past practices unless they were in effect on the date of this Agreement and not covered by this Agreement, as defined by FLRA case law.		practices ~~and~~ ~~**memoranda of understandings, supplemental agreements, and any other written agreements agreed to by**~~ **the parties** unless they were in effect on the date of this Agreement~~**, and do not conflict with any provisions of** by this Agreement, as defined by FLRA case law.~~ **The parties agree that the** following list of memoranda of understanding will remain in effect: ALJ Office SpaceMOU **dated February 11, 2015; Reassignment to new offices where O offices have been established dated June 22, 2015; Elimination of Outlook Web Access MOU dated March 3, 2016; WebTA MOU dated June 14, 2016; Lincoln, NE Satellite Hearing Office MOU dated January 26, 2017; SSA/IFPTE Ground Rules dated October 18, 2018 and Portland Office MOU dated January 23, 2018. The parties agree that the following list of memoranda of understanding will no longer be in effect: Decision to Conduct 2013 Judicial Training dated March 11, 2013; 2014 Judicial Training dated March 13, 2014; Expansion Remodel Portland Hearing Office dated April 30, 2014; 2015 Judicial Training MOU dated April 21, 2015; 2016 Judicial Training MOU dated April 6, 2016; Relocation of the Atlanta North HO dated August 12, 2016; Relocation New Orleans ODAR dated August 29, 2016; Temp Expansion of Telework to Expedite renovation of Charleston, SC HO dated September 22, 2016; and Tulsa**	

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				Hearing Location MOU dated October 20, 2016.	

ARTICLE 5 Employee Rights					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 03/18/19- Union submitted Union 2 • 03/19/19- Agency submitted Management 2 • 04/05/19- Union submitted package deal (A.5, A.13) • 04/10/19- Agency submitted Management 3 • 04/10/19- Union submitted Union 3 • 04/11/19- Union submitted Union 4 as part of package deal dated 04/11/19 • 04/17/19- Agency submitted Management 4 • 05/08/19- Union submitted Union 5 • 06/17/19-06/20/19- Concentrated Mediation • 06/17/19- Agency submitted package deal 8 (A.5, A.9, A.17) • 06/19/19- Union submitted Union FINAL/LBO • 06/20/19 – Agency submitted Management FINAL/LBO					
	Agency Proposed Language		**Union Proposed Language**		**Explanation**
5	L.28-42	Consistent with their appointment ~~under the Administrative Procedure Act and the United States Office of Personnel Management (OPM) approved position description,~~ Judges ~~shall~~ **may** not ~~be required to~~ perform duties ~~or assignments~~ inconsistent with the**ir** duties and responsibilities ~~of an~~ **as** administrative law judge as set forth in 5 U.S.C. §3105 ~~and 5 C.F.R. §930.209. An administrative law judge may be assigned to perform duties with approval of OPM and pursuant to 5 C.F.R. §930.209.~~ **Regardless of applicable laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business), employees Judges and their exclusive union representatives are prohibited from audio or video recording while on**	L.22-37	Consistent with their appointment under the Administrative Procedure Act and the United States Office of Personnel Management (OPM) approved position description, Judges ~~shall~~ may not be required to perform duties ~~or assignments~~ inconsistent with the**ir** duties and responsibilities ~~of an~~ **as** administrative law judge**s** as set forth in 5 U.S.C. §3105 ~~and 5 C.F.R. §930.209~~. ~~An administrative law judge may be assigned to perform duties with approval of OPM and pursuant to 5 C.F.R. §930.209~~. **Regardless of applicable laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business), Judges, agency officials and union representatives are prohibited from audio or video recording while engaging in labor management proceedings to include but not limited to Weingarten examinations and**	The Parties dispute whether the CBA should include citation to the Administrative Procedure Act and OPM approved position description.

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		~~duty, or conducting union business, or engaging in labor-management proceedings.~~ Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business or any Agency internal security measures), Judges, their representatives, and managers are prohibited from audio or video recording during any interaction between any of these parties. Judges will be put on notice of this provision.		**~~formal discussions. If a recording is made in violation of this provision, it will not be admitted by either party in an arbitration governed by this agreement.~~ Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business) Judges, their representatives, and managers are prohibited from audio or video recording during any interaction between any of these parties. Judges will be put on notice of this provision.**	
6	L.84-100	Examinations~~, Meetings, and Investigations~~ ~~Disciplinary Examinations~~ Consistent with 5 U.S.C. §7114(a)(2)(B), as the exclusive representative, the AALJ shall be given an opportunity to be present at any examination of a Judge in the unit by a representative of the ~~Employer~~ **Agency** in connection with an investigation if the Judge reasonably believes that the examination may result in disciplinary action against the Judge and the Judge requests representation. When the manager is aware that a meeting may result in disciplinary action, the manager will inform the Judge of the general purpose of the meeting ~~and will inform the Judge of his or her right to have an AALJ representative present if he or she chooses~~. Upon request, the Judge, in such instance, has the right to have an AALJ representative present at such examination pursuant to Article 6 and no ~~further~~ questioning shall take	L.74-87	Examinations, Meetings, and Investigations Disciplinary Examinations Consistent with 5 U.S.C. §7114(a)(2)(B), as the exclusive representative, the AALJ shall be given an opportunity to be present at any examination of a Judge in the unit by a representative of the ~~Employer~~ **Agency** in connection with an investigation if the Judge reasonably believes that the examination may result in disciplinary action against the Judge and the Judge requests representation. When the manager is aware that a meeting may result in disciplinary action, the manager will inform the Judge of the general purpose of the meeting and will inform the Judge of his or her right to have an AALJ representative present if he or she chooses. Upon request, the Judge, in such instance, has the right to have an AALJ representative present at such examination pursuant to Article 6 and no further questioning shall take place until the Judge's representative is present (normally not more than one week) as provided by this section.	The issue in dispute is whether an Agency management official must exceed statutory obligations by informing a Judge of the right to union representation at investigatory examinations.

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		place until the Judge's representative is present **(normally not more than one week)** as provided by this section ~~**normally not more than one week.**~~			
7	L.102-113	If **an examination has commenced, a Judge requests an AALJ representative, and** ~~the~~ **an** AALJ representative is unavailable, the examination shall be terminated and rescheduled as soon as ~~the~~ **an** AALJ representative has become available provided no unreasonable delay occurs, **normally not more than one week.** ~~The Parties recognize that while in person representation is preferred, telephonic participation by the AALJ representative is permitted~~ **If an AALJ representative cannot personally attend, ~~M~~meetings may be held utilizing appropriate technology as determined by the Agency**. When in person representation is not possible, due to travel hearing schedule conflicts for example, but the Judge has requested his or her appointed AALJ representative participate by telephone, the Employer agrees that telephonic representation should be permitted.	L.88-97	If ~~the~~ **an** AALJ representative is unavailable, the examination shall be terminated and rescheduled as soon as ~~the~~ **an** AALJ representative has become available provided no unreasonable delay occurs, **not normally more than one week**. **If an AALJ representative cannot personally attend, meetings may be held utilizing appropriate technology as determined by the Agency.** ~~The Parties recognize that while in person representation is preferred, telephonic participation by the AALJ representative is permitted.~~ When in-person representation is not possible, due to travel hearing schedule conflicts for example, but the Judge has requested his or her appointed AALJ representative participate by telephone, the Employer **Agency** agrees that telephonic representation should be permitted.	The Parties are in substantive agreement about when a Weingarten meeting should be postponed. The Agency's language attempts to clarify two different situations: (1) before the Weingarten has commenced, and (2) when the Weingarten has commenced.
8	L.188-191	~~Section 5~~ ~~ODAR has decided that the time frames set forth in the Benchmarks for case processing contained in the CPMS report are guidelines for the management officials and will not be used as a source of any disciplinary or performance action. The Judges are encouraged by ODAR to aim to meet the guidelines and cooperate with benchmark reports.~~	L.154-162	Section 5 – ~~**Benchmarks**~~ **Case Processing Guidelines** ~~OHO~~ ~~**The Agency**~~ ~~has decided that the~~ ~~t~~**T**ime frames **established by the Agency** ~~set forth in the Benchmarks~~ for case processing ~~contained in the CPMS report are~~ guidelines **such as ALPO, EDIT, POST, etc., will not be used as a source of any disciplinary or performance action**. **The Parties agree that such timelines are tolled during any period of approved leave, office closures, weekends, holidays and any other period of time when a**	The expired CBA includes language addressing benchmarks as aspirational timeframes for case processing. The Agency proposes removing all language regarding benchmarks, while the Union proposes to modify the CBA language to prevent disciplinary actions for not meeting benchmark timeframes. Further, the Union proposes that benchmark periods should be tolled for Judge absences.

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				Judge is out of the office due to circumstances beyond their control. ~~for the management officials and will not be used as a source of any disciplinary or performance action.~~ The Judges are encouraged by the **Agency** to aim to meet the guidelines and cooperate with benchmark reports.	
9	L.193-198	Section 4 – Complaints Regarding ~~Attorney and Non-Attorney~~ Representatives A Judge may provide written ~~adverse~~ information **regarding suspected violations of the rules pertaining to a representative's conduct pursuant to Agency policy.** ~~about an attorney or non-attorney representative directly to the Office of General Counsel; a copy of the information will also be simultaneously provided to the appropriate RCALJ.~~	L.164-170	Section 6 – Complaints Regarding ~~Attorney and Non-Attorney~~ Representatives A Judge may provide written ~~adverse~~ information **regarding suspected violations of the rules pertaining to a representative's conduct ~~about~~ ~~an attorney or non-attorney~~ ~~a representative~~ ~~directly~~ to the Office of General Counsel through their HOCALJ, and should seek guidance and follow the requirements currently set forth in the relevant HALLEX provision.** ~~the Office of General Counsel; a copy of the information will also be simultaneously provided to the appropriate RCALJ~~.	The expired CBA includes language regarding how complaints against claimant representatives should be handled. The Agency proposes removing the specific steps to be taken and noting reports should be made pursuant to Agency policy. The Union proposes adding language from HALLEX, which is newly implemented Agency policy.
10	L.202-205	Complaints Regarding a Judge Any observation or complaint regarding a Judge's conduct occurring outside of the hearings and appeals process that may be used to propose discipline will be **processed pursuant to Agency policy and consistent with applicable law** ~~brought to the attention of the Judge as soon as possible after the receipt of the complaint~~.	L.172-180	Complaints Regarding a Judge Any observation or complaint regarding a Judge's conduct occurring outside of the hearings and appeals process that may be used to propose discipline will be **processed pursuant to Agency policy and consistent with applicable laws** brought to the attention of the Judge as soon as possible after the receipt of the complaint ~~**but no later than ten work days from the date the complaint was submitted against the Judge, unless such disclosure is prohibited by law.**~~ **The Agency must provide any investigative report, whose disclosure is not otherwise prohibited by law, ~~made concerning the complaint~~ to the Judge upon its conclusion. If the disclosure is prohibited by law, the Agency shall cite the**	The Agency proposes that complaints, and notices of complaints, against a Judge be processed in accordance with Agency policy. The Union proposes language regarding when to notify a Judge of a complaint and to provide a report to the Judge upon completion of any investigation.

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				applicable law that prevents disclosure.	
11	L.224-233	~~The Employer will encourage law enforcement officials to pursue allegations of criminal conduct violative of 18 U.S.C. §111 (Assaulting, Resisting or Impeding Certain Officers or Employees), §115 (Influencing, Impeding or Retaliating Against a Federal Official by Threatening or Injuring a Family Member), §372 (Conspiracy to Impede or Injure Officer), §876 (Mailing Threatening Communications), §1111 (Murder), §1112 (Manslaughter), §1113 (Attempt to Commit Murder or Manslaughter), §1114 (Protection of Officers and Employees of the United States), §1117 (Conspiracy to Murder), §1201 (Kidnapping) and 42 U.S.C. §1320a-8b (Attempts to Interfere with Administration of Social Security Act) involving any Judge while engaged in or on account of the performance of any Judge's official duties where the Employer determines such action is warranted.~~	L.193-204	**The Agency shall notify law enforcement officials of any and all credible claims of threat of harm against any Judge within the Agency.** ~~The Employer will encourage law enforcement officials to pursue allegations of criminal conduct violative of 18 U.S.C. §111 (Assaulting, Resisting or Impeding Certain Officers or Employees), §115 (Influencing, Impeding or Retaliating Against a Federal Official by Threatening or Injuring a Family Member), §372 (Conspiracy to Impede or Injure Officer), §876 (Mailing Threatening Communications), §1111 (Murder), §1112 (Manslaughter), §1113 (Attempt to Commit Murder or Manslaughter), §1114 (Protection of Officers and Employees of the United States), §1117 (Conspiracy to Murder), §1201 (Kidnapping) and 42 U.S.C. §1320a-8b (Attempts to Interfere with Administration of Social Security Act) involving any Judge while engaged in or on account of the performance of any Judge's official duties where the Employer determines such action is warranted.~~	The Union proposes adding language that the Agency be required to notify law enforcement officials of any and all credible threats against a Judge. The Agency does not propose specific language in the CBA as this matter is already addressed by Agency policy.
12	L.277-278	**The Agency and the AALJ share a mutual interest in assisting a Judge who is adversely affected by a RIF consistent with applicable law and regulation.**	L.235-236	**The Agency and the AALJ share a mutual interest in assisting a Judge who is adversely affected by a RIF.**	The Parties agree that the Agency will assist Judges with RIF actions, but the Agency proposes to add language that the assistance be consistent with applicable law and regulation.
13	L.298-300	~~**If the formal discussion requirements of 5 U.S.C. §7114(a)(2)(A) are met,** T~~the AALJ has the right to be present during questioning of potential **AALJ** bargaining unit witnesses for any third party hearing **to the extent required by 5 U.S.C. Chapter 71.**	L.253-256	The AALJ has the right to be present during questioning of potential bargaining unit witnesses for ~~**any third-party hearings concerning matters that fall within the AALJ's representational duties.**~~ any third-party hearing.	The Agency proposes language to clarify when an AALJ representative may be present for a third party hearing where a Judge serves as a witness.
14	L.306-307	**Judges must be on non-duty or lunch time when accessing electronic messages from the AALJ.**	L.259-263	**The parties agree to adhere to the SSA Policy on Limited Personal Use of Government Office Equipment Including**	The Agency seeks to clarify that Judges should access AALJ emails during non-duty and lunch hours. The Union does not address emails

				Information Technology. As such, Federal employees are permitted limited use of government office equipment for personal needs if the use does not interfere with official business and involves minimal additional expense to the government.	specifically, but indicates Judges are permitted limited use of Agency systems consistent with Agency policy.

ARTICLE 9 Official Time					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 04/15/19 – Agency submitted Management 2 • 06/05/19- Union submitted Union 2 • 06/17/19-06/20/19- Concentrated Mediation • 06/17/19- Agency submitted package deal 8 (A.5, A.9, A.17) • 06/20/19 – Agency submitted Management FINAL/LBO • 06/21/19 – Union submitted Union FINAL/LBO					
	Agency Proposed Language		**Union Proposed Language**		**Explanation**
15		**Union** time		Official time	Throughout this Article, the Agency and Union differ as to the title for time utilized by Union representatives for representational activities. The Agency is proposing "union" time, while the Union is proposing "official" time.
16		*No proposed language*	L.13-25	**Consistent with** 5 U.S.C. §7131, **official** time shall be granted, **consistent with the statute, ~~O~~official time will not be unreasonably denied~~,~~ ~~a~~And as such, the Agency will contemporaneously provide a credible justification for all denials of requests for official time. The response to the official time request must take place prior to the commencement of the requested representational activity. If the Agency fails to respond, the representative will not be disciplined for engaging in the representational activity. Union representatives must**	The Union is proposing language regarding when and how requests for union time can be denied. In this Section, the Union is requesting "reasonable time" as the amount of hours to be utilized for representational activities. In later Sections of this Article, the Agency proposes requirements for union time to be granted, as well as a designated number of hours for representational activities.

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				make a good faith effort to reach an approving agency official. If official time is denied, any timelines, including grievance and arbitration timelines, are ~~waived~~ tolled, until such time the dispute over the official time denial is resolved. The Union President or designee will notify the Agency of the union representatives entitled to reasonable official time.	
17	L.92-95	~~Official~~ **Union** time may only be used on the days and during the times that an AALJ official would be otherwise in a duty status~~,~~ ~~but may on occasion involve extended work days and weekends including Sunday (i.e. bargaining or hearing preparation)~~. Internal AALJ business will be conducted on non-duty time.	L.81-84	Official time may only be used on the days and during the times that an AALJ official would be otherwise in a duty status, but may on occasion involve extended work days and weekends including Sunday (i.e. bargaining or hearing preparation). Internal AALJ business will be conducted on non-duty time.	The Agency is proposing union time can only be utilized while on duty status. The Union is proposing union time usage beyond regular work hours and on weekends.
18	L.97-102	~~Official time may be used to claim credit hours if representation activities or negotiations (as noted in paragraph A, above) last longer than normal duty hours during a workday or occur on a weekend in accordance with the provisions of the credit hour plan contained in Hours of Work, Article 14.~~ **Union time is not permitted on telework (including work at home by exception), or outside the time the union representative would otherwise be in duty status.**	L.85-88	~~Official time may be used to claim credit hours if representation activities or negotiations (as noted in paragraph A, above) last longer than normal duty hours during a workday or occur on a weekend in accordance with the provisions of the credit hour plan contained in Hours of Work, Article 14.~~	The Agency is proposing that union time may not be used while teleworking or otherwise outside of regular duty status.
19	L.104-105	**Union time is not permitted for any union-sponsored training, meeting, or conference held at a restaurant, casino hotel, spa resort/hotel, or any other similar type of facility.**		*No proposed language*	The Agency seeks to clarify when union time can be utilized for non-representational activities.

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20	L.109-120	**Union time is not permitted for a Judge who:** **Is subject to a workload or policy compliance directive in the prior six months**		*No proposed language*	The Agency proposes limiting union time for Judges subject to management directives related to workload and/or policy compliance.
21	L.133-142	**With prior supervisory approval, a** Judge~~s~~ covered by this Agreement will be accorded reasonable duty time **as determined by the Agency**, not charged to ~~official~~ **union** time, to consult with an **SSA** AALJ representative for representational purposes or for representing themselves consistent with the terms of this Agreement and applicable regulations and law. This includes time for preparation, attendance (at meetings and/or hearings) and travel of the Judge for matters such as, grievance/arbitration, FLRA, MSPB, EEO, or other disciplinary actions, adverse action proceedings, and ULP charges and/or complaints. The Judge will ~~make every reasonable effort to~~ request and have advance approval of such use of duty time. The Judge ~~will~~ **must** continue to **perform Agency assigned work in accordance with Agency expectations.** ~~administer and control his/her hearing case docket in a manner that is in the best interest of the public~~.	L.99-107	**A** Judge covered by this Agreement will be accorded reasonable duty time not charged to official time, to consult with an **SSA** AALJ representative for representational purposes or for representing themselves consistent with the terms of this Agreement and applicable regulations and law. This includes time for preparation, attendance (at meetings and/or hearings) and travel of the Judge for matters such as, grievance/arbitration, FLRA, MSPB, EEO, or other disciplinary actions, adverse action proceedings, and ULP charges and/or complaints. The Judge will ~~make every reasonable effort to~~ request and have advance approval of such use of duty time. The Judge will continue to ~~administer and control his/her hearing case docket in a manner that is in the best interest of the public~~.	The Agency proposes that a Judge obtain supervisory approval of duty time prior to consulting with Union representatives for representational purposes. Further, a Judge must perform Agency assigned work in accordance with Agency expectations.
22	L.146-152	The AALJ President will provide the Office of Labor Management and Employee Relations (OLMER) with electronic lists of all designated union representatives within thirty ~~(30)~~ days of the effective date of this Agreement. The AALJ President will continue to provide OLMER with updated summary lists as necessary. Each list will include the name, ~~designated~~	L.108-115	The AALJ President will provide the Office of Labor Management and Employee Relations (OLMER) with electronic lists of all designated union representatives within thirty ~~(30)~~ days of the effective date of this Agreement. The AALJ President will continue to provide OLMER with updated summary lists as necessary. ~~Each list will include the name~~, ~~designated official time caps based on position type listed in Section 8B available to~~	The expired CBA requires the Union to provide a list to the Agency with specific information regarding designated Union representatives utilizing union time. While the Union agrees to provide the list, the Union proposes removal of any language regarding what information must be provided in the list.

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		~~official time caps based on position type listed in Section 8B available to the representative (i.e., 1,872, 1,664, 1,400, 1,352, 1,248, 1,040, 300 and 208 hours),~~ duty location, and telephone number of each designated union representative.		~~the representative (i.e., 1,872, 1,664, 1,400, 1,352, 1,248, 1,040, 300 and 208 hours), duty location, and telephone number of each designated union representative.~~	
23	L.159-164	~~Official~~ **Union** time ~~need not be~~ **must be** requested in advance of use~~.~~**, and an authorizing official must approve the request prior to engaging in union time. A representative who uses union time without advance management approval will be considered absent without leave and subject to appropriate disciplinary action. The representative will inform the authorizing official when he/she returns to work after completion of the representational activity.**	L.118-121	Official time need not must be requested in advance of use **and need not be performed at the union representative's permanent duty station.**	The Union proposes that union time need not be requested in advance or be performed at the representative's permanent duty station. The Agency proposes use of union time be requested in advance or the representative would be considered absent without leave and subject to discipline. As noted in previous sections, the Agency proposes that union time only be performed at the representative's official duty station. Further, the Agency seeks to have representatives notify management of when representational activities are complete.
24	L.187-195	All ~~reporting~~ **requesting** of ~~official~~ **union** time will be submitted via OUTTS or equivalent electronic reporting system. ~~Reporting~~ **Requests for** ~~of official~~ **union** time ~~used~~ will be submitted ~~on a weekly basis~~ **in advance** ~~**(typically at least twenty-four hours)**~~ via OUTTS~~, unless the representative is in travel status, on leave or otherwise not available, in which case the report will be submitted as soon as practicable upon the representative's return~~. Sufficient information (time, date, representational category and specific location if other than normal duty station) must be included with the submission to allow the approving official to determine if the time requested and activity described met the criteria outlined in this Article.	L.128-135	All reporting of official time will be submitted via OUTTS or equivalent electronic reporting system. Reporting of official time used will be submitted on a weekly basis via OUTTS~~, unless the representative is in travel status, on leave or otherwise not available, in which case the report will be submitted as soon as practicable upon the representative's return~~. Sufficient information (time, date, representational category and specific location if other than normal duty station) must be included with the submission to allow the approving official to determine if the time requested and activity described met the criteria outlined in this Article.	The Agency proposes that Union representatives request union time in advance of use through the Agency approved system. The Union proposes that representatives report union time used on a weekly basis.

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25	L.202-203	~~Official~~ **Consistent with 5 U.S.C. Chapter 71, union** time will be **granted for** ~~reported in~~ the following **representational activities** ~~categories~~:	L.140	Official time will be reported in the following categories:	The Agency proposes that requested union time be granted for certain representational activities consistent with statue, while the Union proposes to report use for these activities without prior approval as noted above.
26	L.221-225	The **Agency** ~~Deputy Commissioner and/or designee~~ will provide to the AALJ President ~~a monthly~~ **upon request a** report showing the ~~official~~ **union** time used for each region, the total time used for each region, the amount of ~~official~~ **union** time charged against the ~~pool~~ **bank**, and the amount of ~~official~~ **union** time remaining in the ~~pool~~ **bank**. ~~Monthly reports will be provided within 20 calendar days after the end of each month.~~	L.153-157	The **Agency** ~~Deputy Commissioner and/or designee~~ will provide to the AALJ President a monthly report showing the official time used for each region, the total time used for each region, the amount of official time charged against the ~~pool, and the amount of official time~~ remaining in the pool. Monthly reports will be provided within 20 calendar days after the end of each month.	The Parties dispute the frequency the Agency should provide a report of union time utilized, with the Union requesting the report be provided monthly and the Agency proposing it be provided upon Union request.
27	L.227-230	~~All users of Official Time will make entries directly into the OUTTS system on a screen substantially similar in format and content to the screen currently in use by AFGE. The Employer will make modification to the existing OUTTS screen to comport with the terms of this Agreement (e.g. no prior approval requires, time reported weekly, etc.).~~	L.158-161	All users of Official Time will make entries directly into the OUTTS system ~~on a screen substantially similar in format and content to the screen currently in use by AFGE. The Employer will make modification to the existing OUTTS screen to comport with the terms of this Agreement (e.g. no prior approval requires, time reported weekly, etc.).~~	The Agency proposes elimination of this entire section of the Article because the requesting provisions are addressed in earlier sections.
28	L.240-241	**The Parties agree that a bank of ~~1,500~~ 2,000 hours per fiscal year will be made available for representational duties.**		*No proposed language*	The Agency is proposing a bank of 2,000 union time hours per year. As noted in earlier sections of this Article, the Union is proposing "reasonable" time.
29	L.243-246	**The AALJ President will be entitled to up to ~~400~~ 500 hours of union time per fiscal year. All other representatives will be entitled to up to ~~150~~ 200 hours of per fiscal year. The total distribution for all AALJ representatives may not exceed the total number of bank hours designated above.**		*No proposed language*	The Agency is proposing limits on the number of union time hours allotted to Union representatives. As noted in earlier sections of this Article, the Union is proposing "reasonable" time, so no allotment is addressed by the Union.

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30	L.248-252	**An AALJ representative who has reached their individual cap will be authorized union time in accordance with sections 7131(a) or 7131(c) of title 5, United States Code. Time for these activities will be charged to the union bank for that fiscal year. However, if the bank has been exhausted, any further union time will be charged to the bank for the following fiscal years.**		*No proposed language*	The Agency is proposing how to handle representatives who exceed their union time limits. As noted in earlier sections of this Article, the Union is proposing "reasonable" time, so no allotment is addressed by the Union.
31	L.254-257	**AALJ representatives must stagger their use of authorized union time hours over the course of the fiscal year, and must work out union time usage with the Agency to accommodate both union representational activities and Agency assigned work. A mutually agreed upon schedule is required for scheduling union time.**		*No proposed language*	The Agency is proposing Union representatives accommodate both Agency assigned work and the use of union time when scheduling Union representational activities.
32	L.260-262	**Time spent by AALJ representatives, representing Judges in the informal and formal stages of the EEO complaint process, is union time under this Article and is charged towards the individual caps and bank.**		*No proposed language*	The Agency proposes that time spent on EEO representational activities by Union representatives be charged as union time subject to the bank and cap provisions above.
33	L.264-265	**Should this Agreement become effective on a day other than the first day of a fiscal year, the bank and individual caps will be prorated.**		*No proposed language*	The Agency proposes prorating the union time bank and caps depending on the effective date of the new CBA after the first day of the fiscal year.

ARTICLE 13 Judicial Training in OHO
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 03/18/19 – Agency submitted Management 2 • 04/05/19- Union submitted package deal (A.5, A.13) • 04/09/19- Union submitted Union 2 • 04/11/19- Union submitted Union 3 as part of package deal dated 04/11/19

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- 04/12/19- Union submitted package deal (A.13, A.17)
- 05/07/19- Agency submitted package deal (A.2, A.3, A.6, A.8, A.13, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29)
- 05/09/19- Union submitted package deal (A.3, A.13)
- 06/17/19-06/20/19- Concentrated Mediation
- 06/17/19- Agency submitted package deal 9 (A.7, A.13, A.20, A.25)
- 06/20/19 – Agency submitted Management FINAL/LBO
- 06/20/19 – Union submitted Union FINAL/LBO

	Agency Proposed Language		Union Proposed Language		Explanation
34	L.1-13	~~**JUDICIAL FUNCTION IN THE OFFICE OF HEARING OPERATIONS DISABILITY ADJUDICATION AND REVIEW**~~ ~~Judges play a vital role in the accomplishment of the ODAR **OHO** mission and make a significant contribution to the mission. of issuing hearing decisions that are timely and correct determinations by the Commissioner of the Social Security Administration. In making hearing decisions, a Judge may determine when a case is ready to be scheduled for a hearing, conduct a full and fair hearing when required, and must issue a legally sufficient decision. The ODAR has the authority to provide necessary support staff for the Judges.~~	L.3-35	**JUDICIAL FUNCTION** ~~**IN THE OFFICE OF HEARING OPERATIONS DISABILITY ADJUDICATION AND REVIEW**~~ Judges play a vital role and make a significant contribution to ~~in~~ the accomplishment of the ODAR **OHO Agency's** mission ~~and make a significant contribution to the mission **of the Agency**.~~ of ~~issuing hearing decisions that are timely and correct determinations by the Commissioner of the Social Security Administration.~~ **Judges are inferior officers appointed pursuant to 5 U.S.C. § 3105. Judges are called upon to discharge significant duties and exercise significant discretion in conducting proceedings under the Administrative Procedure Act and laws of the United States. Judges preside over hearings conducted in accordance with 5 U.S.C. § 556 and 557. Judges decide matters of fact and law in accordance with applicable laws, rules, regulations and Agency policy pronouncements.** ~~**The Social Security Act, Administrative Procedure Act, Agency Regulations, Social Security Rulings, and other SSA policy pronouncements. An ALJ's hearings and decisions should be in accordance with the Social Security Act.**~~ **In regulating the course of ~~the~~ a hearing, a Judge ~~may~~ shall, among other things,** determine when a case is ready to be scheduled for a hearing **or should be postponed, admit all**	The Agency seeks to eliminate the Article while the Union proposes to include language alleging Judges are inferior officers performing work related to the Administrative Procedure Act and determine the readiness of cases to be heard before them.

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				pertinent evidence, secure additional evidence (*e.g.* medical records, consultative examinations), make determinations ~~as to~~ regarding whether expert witnesses are needed ~~and the~~ as well as, the type of expert required.; **The Judge** conducts a full and fair hearing**;** ~~when required, must~~ issues legally sufficient decisions, **and performs all other functions prescribed by applicable laws, rules and regulations**. ~~The OHO has the authority to provide necessary support staff to the Judges.~~ ~~**The following case citations and case law demonstrate the judicial function of Judges: 5 U.S.C. §3105 (appointment of administrative law judges); 5 U.S.C. §1305 (outline of OPM and MSPB authority when administrative law judges involved); 5 C.F.R. §930.201 *et seq*. (Administrative Law Judges Program Rules); 5 U.S.C. §2302 (prohibited personal practices); 5 U.S.C. §7521 (actions against administrative law judges); 5 U.S.C. §4301 (administrative law judges not included in Federal employee performance appraisal systems); 5 U.S.C. §3344 (Details: administrative law judges); 5 U.S.C. §5372 (pay system for administrative law judges); Butz v. Economou, 438 U.S. 478 (1978) ; Ramspeck v. Federal Trial Examiners Conference, 345 U.S. 128 (1953); Social Security Administration v. Robert W. Goodman, 19 M.S.P.R. 321 (1984); subject to changes in the law.**~~	

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ARTICLE 14 Hours of Work					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 03/20/19- Union submitted Union 2 • 04/17/19 – Agency submitted Management 2 • 06/06/19- Agency submitted package deal 5 (A.14 & A.31) • 06/17/19- Union submitted package deal (A.14 & A.31) • 06/17/19-06/20/19- Concentrated Mediation • 06/18/19- Agency submitted package deal 10 (A.14 & A.31) • 06/19/19- Agency submitted package deal 12 (A.14 & A.31) • 06/20/19 – Agency submitted Management FINAL/LBO • 07/03/19 – Union submitted Union FINAL/LBO					
	Agency Proposed Language		**Union Proposed Language**		**Explanation**
35	L.20-22	Credit Hours~~.~~ - Any hours within a flexible schedule established under 5 U.S.C. §6122, which are in excess of a Judge's basic work requirement and which the Judge elects to work so as to vary the length of a workweek or a workday.	L.20-22	Credit Hours~~.~~ - Any hours within a flexible schedule established under 5 U.S.C. §6122, which are in excess of a Judge's basic work requirement and which the Judge elects to work **of their own choosing** so as to vary the length of a workweek or a workday.	The Union added additional language to explain that when a Judge elects to work, it is of their own choosing.
36		*No proposed language*		**Premium Pay**	Throughout this Article, the Union proposes language defining premium pay, as well as eligibility and procedures for when Judges can earn premium pay. The Agency does not address premium pay because the subject matter is covered entirely by government rules and regulations.
37		*No proposed language*	L.219-221	**Judges authorized to work flexible work schedules, and for whom credit hours are applicable, shall receive credit hours for any hours worked in excess of the basic work requirement when such work is worked at the Judge's own election or choosing.**	The Agency's position is that credit hours may only be earned between 6:30 a.m. and 6:00 p.m., while the Union's proposal suggests an ability to work credit beyond those hours.
38		*No proposed language*	L.238-240	**The Agency, subject to mission critical needs, will set reasonable goals and benchmarks, as much as practicable, to avoid the need for Judges working in excess**	The Union proposes language limiting management's right to assign work and direct employees.

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				of the basic work requirements.	
39	L.269-278	~~Judges will provide annual written notice to the HOCALJ or Acting HOCALJ of the Judge's request to work credit hours.~~ **I. In advance, a Judge must submit and receive Agency approval, in WebTA or successor program, for requests to earn Credit Hours.** ~~The Parties acknowledge that given the Employer's current workload, appropriate work is typically available for credit hours work. In the event a HOCALJ or Acting HOCALJ makes a reasonable and good faith determination that work appropriate for credit hours is not available for Judges assigned to the hearing office, t~~**The** ~~HOCALJ or Acting HOCALJ~~ **Agency** will ~~so~~ notify the ~~hearing office~~ Judges ~~in writing~~ regarding the basis for~~,~~ ~~and duration of that determination~~ **any denial to earn Credit Hours**.	L.299-308	~~Judges will provide annual written notice to the HOCALJ or Acting HOCALJ of the Judge's request to work credit hours. The Parties acknowledge that given the Employer's current workload, appropriate work is typically available for credit hours work. In the event a HOCALJ or Acting HOCALJ makes a reasonable and good faith determination that work appropriate for credit hours is not available for Judges assigned to the hearing office, t~~**The** ~~HOCALJ or Acting HOCALJ~~ **Agency** ~~will so notify the hearing office Judges in writing regarding the basis for, and duration of that determination~~.	The Agency proposes that Judges must submit credit hour requests in advance and the Agency will provide reasons for denials of any of these requests.

ARTICLE 15 Telework					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 04/11/19- Union submitted Union 2 • 06/17/19-06/20/19- Concentrated Mediation • 06/20/19 – Agency submitted Management FINAL/LBO • 06/20/19 – Union submitted Union FINAL/LBO					
	Agency Proposed Language			**Union Proposed Language**	**Explanation**
40	L.7-9	**The Agency may permit eligible IFPTE bargaining unit Judges to perform Agency assigned work at a management-approved alternate duty station. The Agency reserves the right to suspend or terminate Telework without notice.**		**The Agency may permit eligible IFPTE bargaining unit Judges to perform Agency assigned work at a management-approved alternate duty station(s). The Agency reserves the right to suspend or terminate Telework without notice consistent with this Article.**	The Union proposes the possibility of more than one alternate duty station.

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41	L.13-15	**Alternate Duty Station (ADS) – a management-approved work site that is geographically convenient (within two hours of the ODS) to the Judge's official duty station, as reflected in the Telework Program Agreement.**		**Alternate Duty Station (ADS) – a management-approved work site that is a location other than the Judge's official duty station such as a Judge's domicile or other approved residence, as reflected in the Telework Program Agreement.**	The Agency proposes that an ADS location should be geographically convenient to the Judge's ODS, while the Union proposes an ADS is any location other than the Judge's ADS.
42	L.29	**Unscheduled Telework – approved telework on a non-scheduled day at an ADS.**		**Unscheduled Telework – telework on a non-scheduled day at an ADS.**	The Agency proposal requires approval of unscheduled telework.
43	L.41-42	**The Agency will determine whether a Judge is eligible to telework and the number of days eligible Judges are permitted to telework.**		**Pursuant to applicable law, the Agency has determined the position of ALJ is eligible to telework.**	The Agency proposal provides flexibility to determine telework eligibility.
44		*No proposed language*		**A Judge will not be prohibited from participating in telework based on work performance. Pursuant to 5 CFR 930.206, the Agency are prohibited from rating the performance of Judges, as well as provide bonuses and other incentives for work performance. Teleworking and non-teleworking Judges will be treated the same for purposes of work requirements, evaluating what constitutes diminished work productivity, and any other acts involving managerial discretion.**	The Union is proposing limitations in the Agency's ability to determine telework eligibility and management rights.
45	L.77-91	**Not have been issued a reprimand or been subject to an initial decision from the MSPB finding "good cause" for discipline in the prior eighteen months.** **Not have failed to comply with a workload or policy compliance directive in the prior six months.** **Not currently be on sick leave restriction or have been counseled for sick leave abuse or placed on sick leave restriction in the prior twelve months.**		*No proposed language*	The Agency proposes telework eligibility be limited for disciplinary matters and the requirement for close supervision.

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		Not require close supervision.			
46		*No proposed language*		**The Judge has not demonstrated, in the preceding telework cycle, that engaging in telework resulted in diminished work productivity;**	The Union proposes limitations to telework eligibility for diminished work productivity, this infringes upon management rights.
47		*No proposed language*		**The Agency, based upon operational needs, does not have a credible need to change, reduce, suspend, or deny the telework request.**	The Union proposes to limit the Agency's ability to change telework and its management rights.
48	L.101-109	**The Agency will normally counsel a Judge ~~about specific problems, including a diminishment in performance,~~ before terminating ~~removing~~ a Judge from Telework, except in the case of serious violations. When the Agency terminates a Judge's participation in Telework, the Judge will be notified of the reason for termination and the effective date. ~~of the termination.~~ The Agency will consider individual circumstances when determining the effective date of termination from Telework. A Judge terminated ~~removed~~ from Telework may reapply for Telework at the first application cycle following a one-year termination period, unless otherwise prohibited by law, rule, or government-wide regulation.**		**The Agency will ~~normally~~ counsel a Judge about specific problems~~, including a diminishment in performance,~~ before terminating ~~removing~~ a Judge from Telework, except in the case of serious violations. When the Agency terminates a Judge's participation in Telework, the Judge will be notified of the reason for termination and the effective date. ~~of the termination.~~ The Agency must any circumstances beyond the judge's control, such as a decrease in agency resources including staffing, as well as exigent and/or extenuating circumstances, including but not limited to use FMLA, sick, annual or military leave, when determining whether or not to remove a Judge A Judge removed from Telework may reapply for Telework at the first application cycle, or if warranted based on the seriousness of any violations of this Article, after serving a suspension period of no more than one year, unless otherwise prohibited by law, rule, or government-wide regulation.**	The dispute is whether the Agency must counsel a Judge about specific issues prior to terminating telework. The Agency is proposing that it must consider individual circumstances prior to termination, but the Union proposal lists specific circumstances to be considered. Another issue in dispute is whether a Judge must wait for the next telework application cycle to reapply if the Judge's suspension ends between application cycles.
49	L.111-113	**The Agency retains sole discretion to change, reduce, suspend, or eliminate approved telework days of any**		*No proposed language*	The Agency proposal provides flexibility to manage the telework program.

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		Judge, office, or agency-wide due to operational needs.			
50		*No proposed language*		**Judges will be allowed to telework on non-hearing days unless doing so results in reduced productivity, the operational needs of the agency materially change requiring greater attendance on non-hearing days or the Agency directs attendance for mandatory trainings and/or meetings.**	The Union's proposal seeks to permit telework for a Judge on any day the Judge does not have hearings or mandatory trainings.
51	L.147-148	**Judges may only split a telework day between the ADS and the ODS at the discretion of the Agency.**		**Judges will schedule hearing days prior to selecting telework days; however, Judges may only split a telework day between the ADS and the ODS with the permission of the Hearing Office Chief Administrative Law Judge**	The Union proposal is that a Judge must select hearing days prior to scheduling telework days. The Parties dispute whether the Agency in general has discretion to approve partial telework and in office days, or whether this discretion should reside with the HOCALJ, a local management official.
52	L.172-175	**All laws, government-wide rules, government-wide regulations, and Agency policies governing Judge conduct at the ODS continue to apply at the ADS including, but not limited to, the Privacy Act and the Standards of Ethical Conduct for Employees ~~Judges~~ in the Executive Branch.**		**All laws, government-wide rules, government-wide regulations, and Agency policies governing Judge conduct at the ODS continue to apply at the ADS including, but not limited to, the Privacy Act and the Standards of Ethical Conduct for Judges in the Executive Branch.**	The Union seeks to change the name of the Office of Government Ethics (OGE) document, which is applicable to all Executive Branch Employees.
53	L.206-204	**The Agency may require that Judges provide electronic notification to their supervisor at the beginning and/or end of their workday.**		**The Agency requires that Judges provide electronic notification to their supervisor at the beginning and/or end of their workday through WebTA or its successor program.**	The Agency seeks the ability to request electronic notification of when Judges are teleworking, while the Union proposes that the Agency can only require this notification through WebTA.
54	L.230-238	**A Judge will promptly inform management of any disruption at the ADS (e.g., equipment failure, power outages, telecommunication difficulties), that impact the Judge's ability to perform Agency assigned work. In these situations, the Agency may require the Judge to report to the ODS or the Judge may request leave. If the disruption is through no fault**		**A Judge will promptly inform management of any disruption at the ADS (e.g., equipment failure, power outages, telecommunication difficulties), that impact the Judge's ability to perform Agency assigned work. In these situations, the Agency may require the Judge to report to the ODS or the Judge may request leave. If the disruption is through no**	In the event that conditions cause the office to close and the ADS to be too unsafe to telework, a Judge may be granted leave. In dispute is whether the leave will be granted in accordance with Article 18 of this Agreement or whether the leave will be granted in accordance with government policies and any agreements between the Parties.

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		of the Agency, the Judge will be in a non-duty status from the time of the disruption to the end of the scheduled workday or until the Judge reports to the ODS. The Judge may request leave for the non-duty period. However, if the ODS is closed and the condition creating the disruption makes the ADS unsafe, the Judge may be granted leave in accordance with Article 18.		**fault of the Agency, the Judge will be in a non-duty status from the time of the disruption to the end of the scheduled workday or until the Judge reports to the ODS. The Judge may request leave for the non-duty period. However, if the ODS is closed and the condition creating the disruption makes the ADS unsafe, the Judge may be granted leave in accordance with government wide policy and any negotiated agreement between the parties.**	
55	L.244-245	**The Agency may require that Judges use instant messaging, video, or similar technology working at the ADS.**		*No proposed language*	The Agency proposes that it may require various forms of communication to direct the work of Judges while teleworking.
56	L.247-249	**Judges should ensure that the Agency's instant message program, or similar technology, accurately reflects their work status. Judges must timely respond to instant messages from the Agency.**		*No proposed language*	The Agency proposes that it may require various forms of communication to direct the work of Judges while teleworking.
57	L.251-252	**When working at the ADS, a Judge must be accessible by telephone during working hours, exclusive of the lunch period and break periods.**		**When working at the ADS, a Judge must ensure they are accessible to their hearing office chief administrative law judge via telephone.**	The Parties agree that Judges should be accessible by telephone while teleworking; however, the Union seeks to limit any telephone availability to only the HOCALJ.
58	L.256-257	**While at the ADS, a Judge is responsible for retrieving, and responding in a timely manner, to voice mail left at both the ADS and the ODS.**		**While at the ADS, a Judge is responsible for retrieving, and responding in a timely manner, to voice mail left at both the ADS and the ODS if their hearing office enables access to retrieve work voicemail remotely.**	The Parties agree that Judges are responsible for retrieving and returning voicemails timely. The Union seeks to limit this requirement to only if the office enables a Judge access to voicemails remotely.
59	L.263-264	**A Judge may be called back to the ODS. A Judge required to report to their ODS as soon as possible but no more than two hours after notification.**		**A Judge may be called back to the ODS. A Judge required to report to their ODS as soon as possible but no more than two hours after notification, or the Judge must request leave.**	The Union proposes language specifically addressing a Judge's ability to request leave if called back to the office on a telework day.
60	L.270-273	**If the Agency temporarily suspends telework or calls a Judge back to the ODS, the Judge is not guaranteed "replacement time" or an "in**		**If the Agency temporarily suspends telework or calls a Judge back to the ODS, the Judge is not guaranteed "replacement time" or an "in**	The Parties dispute whether the Agency in general has discretion to approve changes in telework days,

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		lieu of" telework day. However, a Judge's telework day may be temporarily switched to another day with prior Agency approval.		**lieu of" telework day. However, a Judge's telework day may be temporarily switched to another day with the Hearing Office Administrative Law Judge's approval.**	or whether this discretion should reside with the HOCALJ.
61	L.387-388	**I understand I must perform telework at my approved ADS on a day when the ODS closes due to a hazardous weather or safety event in accordance with agency policy.**		**I understand I must perform telework at my approved ADS on a day when the ODS closes due to a hazardous weather or safety event in accordance with government-wide policy.**	While the Parties agree that a Judge must telework in the event the office closes due to hazardous weather, the Parties dispute whether this is in accordance with Agency policy or government-wide policy.
62	L.440-442	**The Agency may require a written daily account of the work performed at my ADS. The format and required content of the written account will be determined by the Agency.**		*No proposed language*	The Agency proposes that it may require written accounts of Judge activities performed while teleworking.
63	L.444-445	**I understand that the Agency may require employees who telework to share workspace (e.g., desk, cubicle, office) at the ODS.**		*No proposed language*	The Agency seeks to maintain flexibility in the management and use of office space.

ARTICLE 18
Leave

Bargaining History
- 02/22/19 – Agency submitted Management 1
- 02/22/19 – Union submitted Union 1
- 04/12/19 – Agency submitted Management 2
- 05/07/19- Agency submitted package deal (A.2, A.3, A.6, A.8, A.13, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29)
- 05/09/19- Union submitted Union 2
- 06/03/19- Agency submitted package deal 1 (A.2, A.3, A.6, A.8, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29)
- 06/04/19- Agency submitted package deal 2 (A.3, A.6, A.8, A.17, A.18, A.21, A.22, A.23, A.27)
- 06/05/19- Union submitted package deal (A.10, A.11, A.12, A.18, A.20, A.22, A.30, A.31)
- 06/05/19- Agency submitted package deal 4 (A.8, A.10, A.11, A.18, A.22)
- 06/06/19- Union submitted package deal (A.18, A.20, A.22)
- 06/17/19-06/20/19- Concentrated Mediation
- 06/17/19- Agency submitted package deal 7 (A.18, A.22)
- 06/19/19- Union submitted Union 3
- 06/19/19- Union submitted FINAL/LBO
- 06/20/19 – Agency submitted Management FINAL/LBO

	Agency Proposed Language		**Union Proposed Language**		**Explanation**
64	L.49-53	**A j**~~J~~udges will ~~**must**~~ submit **a request** for approval ~~a completed form SSA-71, or electronic equivalent~~ **in WebTA** ~~**or successor**~~	L.33-38	**A j**~~J~~udges will ~~**must**~~ submit **a request** for approval ~~a completed form SSA-71, or electronic equivalent~~ **in WebTA or successor program**	The Union proposes language that requires negotiation of any changes made to the WebTA program. The Agency's language reserves the right to make *de minimis* changes to

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		~~program~~ in advance of all anticipated leave to permit the orderly scheduling of leave~~; to avoid leave forfeitures which might otherwise result; and to protect the Judges' right to file for restoration of leave forfeited due to illness or injury or an exigency of public business if all other conditions are met~~.		**for which procedures and appropriate arrangements would be negotiated** in advance of all anticipated leave to permit the orderly scheduling of leave~~; to avoid leave forfeitures which might otherwise result; and to protect the Judges' right to file for restoration of leave forfeited due to illness or injury or an exigency of public business if all other conditions are met~~.	WebTA without triggering a duty to bargain.
65	L.78-82	If ~~the~~ **a** Judge ~~is not in the office~~ **does not have access to WebTA ~~or successor program~~** and the use of ~~annual or sick~~ leave cannot be anticipated, the request for leave approval shall be ~~called in~~ **submitted** ~~within one (1) hour after the start of the Judge's normal tour of duty or core time when flextime is in effect, or as soon as possible thereafter~~**:**	L.54-58	If ~~the~~ **a** Judge ~~is not in the office~~ **does not have access to WebTA or successor program** and the use of ~~annual or sick~~ leave cannot be anticipated, the request for leave approval shall be ~~called in~~ **submitted (via telephone or email)** ~~within one (1) hour after the start of the Judge's normal tour of duty or core time when flextime is in effect, or as soon as possible thereafter~~**:**	The Union proposes clarification that requests for leave must be made by telephone or email. The Agency does not propose such limitation.
66	L.92-103	**To submit a request for unanticipated leave, a Judge must make c~~C~~ontact ~~will be made~~ with the HOCALJ or A~~a~~cting HOCALJ. In the event that neither is available, a Judge ~~may utilize voice mail, where it exists, to notify the HOCALJ or acting HOCALJ of the need for leave~~ must make contact with another hearing office management official such as the Hearing Office Director (HOD) or Group Supervisor (GS).** ~~Notification by automated answer/voice mail does not equate to leave approval.~~ In the event the Judge is unable to make **contact** ~~the call~~, any responsible person can make **contact** ~~the call~~ for the Judge. If the absence extends beyond the anticipated period, a Judge will inform the HOCALJ or A~~a~~cting HOCALJ of the situation promptly. The Judge will submit a completed ~~form SSA-71, or electronic~~	L.65-72	**To submit a request for unanticipated leave, a Judge must make c~~C~~ontact ~~will be made~~ with the HOCALJ or A~~a~~cting HOCALJ. In the event that neither is available, a Judge may utilize voice mail, where it exists, and/or email** to notify the HOCALJ or acting HOCALJ of the need for leave. ~~Notification by automated answer/voice mail does not equate to leave approval.~~ In the event the Judge is unable to make the call **or email**, any responsible person can make the call for the Judge. If the absence extends beyond the anticipated period, a Judge will inform the HOCALJ or A~~a~~cting HOCALJ of the situation promptly. The Judge will submit a completed ~~form SSA-71, or electronic equivalent~~ **request in WebTA or successor program**, promptly upon ~~his or her~~ **their** return to the Hearing Office.	The Agency proposes that a Judge seeking unanticipated leave must speak with a management official and not merely leave a voicemail. The Union proposes that requests for leave can be made by voicemail or email.

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		~~equivalent~~ **request in WebTA ~~or successor program~~**, promptly upon ~~his or her~~ **their** return to the Hearing Office.			
67	L. 105-106	If the Judge's leave status has not been clarified by the close of business, the absence~~ may~~ **will** be ~~charged~~ **recorded** ~~to~~ ~~an~~**as** absence without leave ~~category~~.	L.73-74	If the Judge's leave status has not been clarified by the close of business, the absence~~e~~ may be charged to an absence without leave category.	The Agency proposes that unclarified leave statuses will be recorded as absence without leave; whereas the Union proposes unclarified leave may be charged as absence without leave.
68	L.121-127	**During the months of February and August of each year, Judges will be notified to submit requests for extended annual leave of one calendar week or more and/or requests for days immediately preceding and following federal holidays for the six-month periods of April through September and October through March, respectively. Such requests must be submitted in WebTA ~~or successor program~~ to the appropriate leave approving official by the last day of February and August, respectively.**		*No proposed language*	The Agency proposes language creating a procedure to submit requests for extended annual leave.
69		*No proposed language*	L. 98-106	**Consistent with law and appropriate regulations, leave is an earned right subject to management's right to approve when leave is scheduled. A Judge who takes earned leave (annual or sick) will not be penalized for taking leave by being required to schedule additional cases before or after leave is taken in any calendar year to make up for cases not scheduled while on leave. As such monthly, biannual and annual cases scheduling metrics will be adjusted to account for leave taken. If mission critical operational needs necessitate that a Judge make up cases not scheduled while on earned leave, then a Judge will be compensated pursuant to 5 USC 5541(2), or at management's discretion**	The Union proposes limitations in the Agency's right to assign work and proposes applicability of premium pay. The Agency does not propose language because the subject matter is covered entirely by government rules and regulations.

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				compensatory time in lieu will be provided.	
70	L.459-465	A Judge may be granted advanced annual leave ~~up to the amount that can be earned by the end of the appointment or the leave year, whichever is sooner~~ **for the lesser of ~~forty~~ eighty hours or the amount of annual leave a Judge would accrue the remainder of the leave year ~~(i.e., maximum of forty hours in the leave year). This provision does not apply to~~ a A Judge who is currently on a leave restriction or who has~~ve~~ been disciplined for leave related offenses in the past two years is not eligible for advanced annual leave.**	L.346-348	A Judge may be granted advanced annual leave ~~up to the amount that can be earned by the end of the appointment or the leave year, whichever is sooner~~ **pursuant to applicable law and regulations.**	The Agency proposes limitations in the eligibility and amount of annual leave that can be advanced to a Judge.
71	L.497-502	Each request for advanced sick leave shall be considered by the ~~Employer~~ **Agency** on its individual merits and in accordance with **law, regulations, and Agency policy** ~~the criteria described in paragraphs A and B of this subsection~~. **The reasons for a**~~A~~any denial of ~~the~~ **a** Judge's request for advanced sick leave shall be ~~in writing~~ **recorded in WebTA ~~or successor program~~** ~~with the reason set forth and shall be provided to the Judge at the time of the denial~~.	L.367-371	Each request for advanced sick leave shall be considered by the ~~Employer~~ **Agency** on its individual merits and in accordance with the criteria described in paragraphs A and B of this subsection. **The reasons for a**~~A~~ny denial of ~~the~~ **a** Judge's request for advanced sick leave shall be ~~in writing~~ **recorded in WebTA** ~~with the reason set forth and shall be provided to the Judge at the time of the denial~~.	The Agency proposes language to ensure consistency in considering and approving requests for advancing sick leave in accordance with law, regulations, and Agency policy.
72	L.798-803	**Military Leave will be approved in accordance with law and appropriate regulations. The OPE Website will provide the latest information regarding Military Leave. In addition, the OPE Website will provide an electronic link to the Military Leave information on the OPM Website. A Judge who takes military leave will not be penalized for taking military leave by being required to schedule additional cases before or after military leave is taken in any calendar year to make**	L.602-614	**Military Leave will be approved in accordance with law and appropriate regulations. The OPE Website will provide the latest information regarding Military Leave. In addition, the OPE Website will provide an electronic link to the Military Leave information on the OPM Website. A Judge who takes military leave will not be penalized for taking military leave by being required to schedule additional cases before or after military leave is taken in any calendar year to make up for cases not scheduled while**	The Union proposes limitations in the Agency's right to assign work and proposes applicability of premium pay. The Agency does not address premium pay because the subject matter is covered entirely by government rules and regulations.

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		up for cases not scheduled while on military leave.		**on military leave. As such monthly, biannual and annual cases scheduling metrics will be adjusted to account for military leave taken. If mission critical operational needs necessitate that a Judge make up cases not scheduled while on military leave, then a Judge will be compensated pursuant to 5 USC 5541(2), or at management's discretion compensatory time in lieu will be provided.**	

ARTICLE 20
Reassignments and Hardships

Bargaining History
- 02/22/19 – Agency submitted Management 1
- 02/22/19 – Union submitted Union 1
- 03/19/19 – Agency submitted Management 2
- 04/12/19- Union submitted Union 2
- 06/05/19- Union submitted package deal (A.10, A.11, A.12, A.18, A.20, A.22, A.30, A.31)
- 06/06/19- Union submitted package deal (A.18, A.20, A.22)
- 06/17/19-06/20/19- Concentrated Mediation
- 06/17/19- Agency submitted package deal 9 (A.7, A.13, A.20, A.25)
- 06/18/19- Union presented package deal (A.12, A.20, A.22)
- 06/19/19- Union submitted package deal 2 (A.7, A.20, A.22, A.25, A.30, A.31
- 06/20/19- Union submitted package deal 1 (A.2, A.12, A.20, A.29)
- 06/20/19 – Agency submitted Management FINAL/LBO
- 06/21/19- Union submitted FINAL/LBO

	Agency Proposed Language		**Union Proposed Language**		**Explanation**
73	L.26-28	The ~~Employer~~ **Agency** will determine when there is an open **Judge** position in a hearing office that will be filled by permanent reassignment ~~**transfer**~~ or **new appointment** ~~assignment with a Judge~~.	L.21-23	The ~~Employer~~ **Agency** will determine when there is an open **Judge** position in a hearing office that will be filled by permanent reassignment ~~**transfer**~~ or **if there is no eligible Judge available who is interested, new appointment** ~~assignment with a Judge~~.	The Union proposal requires the Agency to solicit interest of current Judges for reassignments prior to filling vacancies with new appointments.
74	L.34-36	The reassignment ~~**Transfer requests** register and its "affirmed list"~~ as described below ~~shall~~ **may** be used to fill ~~all~~ non-management Judge	L.28-30	The reassignment ~~**Transfer requests** register and its "affirmed list"~~ as described below shall be used to fill ~~all~~ non-management Judge	The Union proposal requires the Agency to fill Judge vacancies with reassignments only through the reassignment process.

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		vacancies~~, except as otherwise provided for in Section 1~~.		vacancies~~, except as otherwise provided for in Section 1~~.	
75	L.53-61	A Judge who **has been issued a reprimand or been subject to an initial decision from the MSPB finding "good cause" for ~~is under investigation for actions that may lead to discipline, has pending discipline, or who has been subject to~~ discipline within the prior eighteen months** ~~has received a letter of reprimand~~ that has been placed in an SF-7B employee record extension file or who has been disciplined pursuant to 5 C.F.R. §930.214 ~~shall have his or her name removed from the request register after final adjudication of the issue and~~ shall not be eligible to ~~have his or her name returned~~ **apply for a reassignment ~~transfer~~** ~~to the register for requested reassignment until twelve (12) months have passed from the date of final adjudication~~.	L.43-50	A Judge who has received a letter of reprimand **that has been adjudicated or did not submit a timely appeal, or been subject to an initial decision from the MSPB finding "good cause" for discipline within the prior twelve months** ~~that has been placed in an SF-7B employee record extension file or who has been disciplined pursuant to 5 C.F.R. §930.214 shall have his or her name removed from the request register after final adjudication of the issue and~~ shall not be eligible to ~~have his or her name returned~~ **apply for a reassignment transfer** to the register for requested reassignment until twelve (12) months have passed from the date of final adjudication.	The Union proposal attempts to clarify that a Judge is eligible for reassignment if a reprimand matter is still pending. The Parties disagree as to how long a Judge is deemed ineligible for reassignment after reprimand or discipline through the MSPB.
76	L.66-68	**A Judge must not have failed to comply with a workload or policy compliance directive in the prior six months.**		*No proposed language*	The Agency proposes to restrict reassignment for a Judge who has failed to comply with a workload or compliance directive.
77	L.73-74	**A Judge must not currently be on sick leave restriction or have been counseled for sick leave abuse or placed on sick leave restriction in the prior twelve months.**	L.51	**A Judge must not have been on sick leave restriction in the prior twelve months.**	While the Parties agree that a Judge on sick leave restriction for the prior twelve months is ineligible for reassignment, the Agency proposal further restricts reassignment for a Judge who has been counseled for sick leave abuse.
78	L.93-95	**When the Agency determines there is an open Judge position in a hearing office, the Agency may solicit ~~transfer~~ reassignment requests from all Judges for the open position.**	L.66-68	**When the Agency determines there is an open Judge position in a hearing office, the Agency shall solicit ~~transfer~~ reassignment requests from all Judges for the open position.**	The Union proposal requires the Agency to fill Judge vacancies with reassignments only through the reassignment process.
79	L.108-111	**If the Agency determines a vacancy is to be filled by reassignment, only Judges who timely respond to the solicitation and meet the eligibility requirements of Section 3 will be considered.**	L.78-80	**When the Agency determines a vacancy is to be filled, only Judges who timely respond to the solicitation and meet the eligibility requirements of Section 3 will be considered.**	The Union proposal requires the Agency to fill Judge vacancies with reassignments only through the reassignment process.

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80		*No proposed language*	L.166-168	**The AALJ President will be provided a quarterly list of all compassion assignment requests and the action taken if any.**	The Union proposal requires the Agency to provide regular reports of all compassion assignment requests.
81	L.242	**The total of all compassion assignments may not exceed one year.**	L.190	**The total of all compassion assignments for the same event may not exceed one year.**	The Agency proposal limits compassion assignments to a total of one year; whereas, the Union proposal limits compassion assignments to one year for the same event.

ARTICLE 29
Facilities and Services

Bargaining History
- 02/22/19 – Agency submitted Management 1
- 02/22/19 – Union submitted Union 1
- 04/15/19- Union submitted Union 2
- 05/07/19- Agency submitted package deal (A.2, A.3, A.6, A.8, A.13, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29)
- 06/03/19- Agency submitted package deal 1 (A.2, A.3, A.6, A.8, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29)
- 06/17/19-06/20/19- Concentrated Mediation
- 06/18/19- Agency submitted package deal 11 (A.2, A.12, A.22, A.29)
- 06/20/19- Union submitted package deal 1 (A.2, A.12, A.20, A.29)
- 06/20/19 – Agency submitted Management FINAL/LBO
- 07/03/19- Union submitted FINAL/LBO

	Agency Proposed Language		**Union Proposed Language**		**Explanation**
82	L.52-54	**The Agency will provide the Union with advance information related to any office opening, consolidation, relocation, expansion, or renovation. These actions will be accomplished in accordance with applicable Agency policies.**	L.47-49	**When the Agency opens, moves, relocates, expands, consolidates or renovates an office, the Agency shall provide notice and opportunity to bargain pursuant to 5 U.S.C. § 7101, et. seq.**	While the Parties agree the Agency will notify the Union of space actions, the Union proposes the ability to bargain.
83	L.124	~~All ODAR space plans must be consistent with applicable local and state fire codes.~~	L.97-98	All ~~ODAR~~ **OHO** space plans must be consistent with applicable local and state fire codes.	The Agency seeks to eliminate language regarding local and state fire codes, while the Union proposes the language remains.
84	L.126-128	~~The ODAR has determined that intrusion detection (security) systems and duress alarms will be installed and monitored consistent with the provisions of Article 29 and its Sidebar applicable to ODAR Field Offices.~~	L.99-101	The ~~ODAR~~ **OHO** has determined that intrusion detection (security) systems and duress alarms will be installed and monitored ~~consistent with the provisions of Article 29 and its Sidebar applicable to ODAR Field Offices.~~	The Agency proposes to remove language regarding installing and monitoring security systems as a management right.

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85	L.130-132	~~Each Judge in a hearing office and a satellite office as defined in Section 1 shall be provided an individual private office consistent with the provisions of Article 29 and its Sidebar applicable to ODAR Field Offices.~~	L.102-111	Each Judge in a hearing office and a satellite office as defined in Section 1 shall be provided an individual private office **that takes in account their position/rank as Inferior Officers and Administrative Law Judges within the Agency's hierarchal structure for office space allocation. As such, Judges offices should be smaller than those of officers who are Presidentially Appointed with Senate confirmation (PAS) and larger than those of all other employees within the agency. The 1998 Space Allocation Standards will be adhered to until such time they are renegotiated by the parties.** ~~consistent with the provisions of Article 29 and its Sidebar applicable to ODAR Field Offices.~~	The Union proposes Judges are entitled to larger offices than all other employees of the Agency.
86	L.184-186	**The AALJ will be notified of the relocation/renovation dates when finalized. The Agency will contact the AALJ's designee to discuss any issues that may come up during the relocation process. Judges will be advised in advance of any renovations.**		*No proposed language*	The Agency proposes language to fulfill bargaining obligations for all space actions.
87	L.191-196	If a Judge's personal materials and/or files will be moved due to a hearing office or satellite office opening, move, relocation, expansion, or renovation, the Judge may receive a reasonable amount of duty time, ~~up to two work days total,~~ away from assigned duties, to pack and unpack those items. Packing, unpacking, setting up, and moving of any furniture/equipment and personal items will be done in a way that does not jeopardize the health and safety of Judges.	L.141-146	If a Judge's personal materials and/or files will be moved due to a hearing office or satellite office opening, move, relocation, expansion, or renovation, the Judge may receive a reasonable amount of duty time, up to two work days total, away from assigned duties, to pack and unpack those items. Packing, unpacking, setting up, and moving of any furniture/equipment and personal items will be done in a way that does not jeopardize the health and safety of Judges.	The issue is regarding the amount of time a Judge will be provided to pack and unpack personal materials and/or files.
88	L.198-200	The ~~Employer~~ **Agency** is not responsible for moving a Judge's personal furniture or	L.147-151	The ~~Employer~~ **Agency** is not responsible for moving a Judge's personal furniture or	The Union proposes the Agency provide assistance in moving

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		decorative items or the loss or damage resulting from moving the furniture or decorative items.		decorative items or the loss or damage resulting from moving the furniture or decorative items, **except, the Agency will provide assistance in moving personal items for judges with disabilities or other physical health conditions, which preclude a judge from personally moving items**.	personal belongings of Judges with physical disabilities.
89	L.223-227	~~Judges will be provided one executive-style desk of unitized wood construction, as specified in the AIMS along with one traditional high-backed "ALJ" chair, or suitable alternative from mandatory Federal supply sources. A computer table and an ergonomic chair will be provided. A table, bookcase, locking file cabinet, U.S. flag display, and two visitors chairs will also be provided.~~	L.168-172	Judges will be provided one executive-style desk of unitized wood construction, as specified in the AIMS along with one traditional high-backed ~~"ALJ"~~ **leather-style** chair, or suitable alternative from mandatory Federal supply sources. A computer table and an ergonomic chair will be provided. A table, bookcase, locking file cabinet, U.S. flag display, and two visitors chairs will also be provided.	The Agency proposes removal of language limiting the style and type of furniture and furnishing provided in each Judge's office.
90	L.232-235	With the concurrence of ~~local management~~ **the Agency**, Judges may bring in a personally-owned ~~desk and/or~~ chair to be used in their offices. Personal decorative objects and items will continue to be allowed within existing standards. Use of personal electrical appliances must comply with Government-wide policies and applicable ~~lease~~ **occupancy** agreements.	L.175-179	With the concurrence of ~~local management~~ **the HOCALJ**, Judges may bring in a personally-owned ~~desk and/or~~ chair to be used in their offices. Personal decorative objects and items will continue to be allowed within existing standards. Use of personal electrical appliances must comply with Government-wide policies and applicable ~~lease~~ **occupancy** agreements.	The issue in dispute is whether personally-owned chairs should be approved by the Agency or specifically the HOCALJ.
91	L.237-238	Window coverings for **J**~~j~~udge offices will be provided as specified in the ~~lease~~ **occupancy** agreement, subject to any building standard limitations.	L.180-189	Window coverings for **J**~~j~~udge offices will be provided as specified in the ~~lease~~ **occupancy** agreement, subject to any building standard limitations **and each door to the Judge's office will have a push button or similar inside lock mechanism and outside key lock mechanism. The Agency will provide a set of two (2) keys to the Judge and will also have as many keys deemed necessary for local management to gain access to the office. The**	The Union proposes additional safety features that infringe upon management rights.

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				Agency will exercise customary courtesy and reasonable notification when requesting access to an occupied and locked Judge's office. Safety against terroristic threats and active shooters, or other acts of civil unrest, mandate increased security precautions.	
92	L.244-250	To ensure the most cost effective scheduling of hearings and use of available resources, ~~management~~ **the Agency** has determined that the hearing rooms in an ~~ODAR~~ **OHO** office are common areas and available for use by any Judge. ~~Absent an agreement by the local Judges acceptable to the Employer,~~ h**H**earing room usage will be scheduled in a manner determined by the ~~hearing office management team~~ **Agency** that will maximize the use of these resources. ~~The holding of~~ h**H**earings ~~by Judges~~ will preempt the use of a hearing room for office or other employee or group meetings.	L.192-198	To ensure the most cost effective scheduling of hearings and use of available resources, management **the Agency** has determined that the hearing rooms in an ODAR **OHO** office are common areas and available for use by any Judge. Absent an agreement by the local Judges acceptable to the Employer, h**H**earing room usage will be scheduled in a manner determined by the hearing office management team **Agency** that will maximize the use of these resources. The holding of h**H**earings by Judges will preempt the use of a hearing room for office or other employee or group meetings.	The Union proposes that Judges may determine the scheduled use of hearing rooms, while the Agency asserts this infringes upon management rights.
93	L.252-255	~~Management will provide a traditional high-backed "ALJ" chair in each hearing room, subject to budgetary constraints. Judges needing alternative seating will be allowed to move one of their Employer-provided chairs from their private office into a hearing room for their hearings.~~	L.199-202	Management will provide a traditional high-backed ~~"ALJ"~~ **leather style** chair in each hearing room, subject to budgetary constraints. Judges needing alternative seating will be **provided an ergonomic chair.** ~~allowed to move one of their Employer-provided chairs from their private office into a hearing room for their hearings.~~	The Agency proposes removal of language limiting the style and type of furniture and furnishings provided in each hearing room.
94	L.257-258	~~Railings of 2½ feet, hung down from the top of the bench, will be provided in each hearing room; the gate will have a latch on the inside, toward the Judge~~.	L.203-204	Railings of 2½ feet, hung down from the top of the bench, will be provided in each hearing room; the gate will have a latch on the inside, toward the Judge.	The Agency proposes removal of language dictating the structure of each hearing room.
95		*No proposed language*	L.205-206	**The panic buttons in the hearing rooms will alert not only Federal Protective Service, but also alert the onsite security personnel.**	The Union proposes language directing who should be contacted in the event a panic button is utilized, which is a management right.

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96		*No proposed language*	L.207-208	**Management will provide height adjustable tables/benches for Judges' use that enables Judges reasonable space for hearing materials and computer equipment.**	The Union proposes language limiting the style and type of furniture and furnishings provided in each hearing room.
97	L.262-268	**To the extent possible,** ~~The~~ current parking situations for **Judges** ~~ALJs in the approximately one hundred sixty-two (162) hearing offices and seven (7) satellite offices~~ shall remain in place. However, when an office lease expires, an office expands its current space, or an office is relocated**,** changes in the distribution of free parking for **Judges** ~~ALJs~~ may be made by the ~~Employer~~ **Agency** consistent with Government-wide regulations ~~including 41 C.F.R. §102-74.305, concerning the criteria for assignment of parking spaces, and OM Memorandum dated June 7, 2000~~.	L.210-215	~~The~~ current parking situations for **Judges** ~~ALJs in the approximately one hundred sixty-two (162) hearing offices and seven (7) satellite offices~~ shall remain in place. However, when an office lease expires, an office expands its current space, or an office is relocated**,** changes in the distribution of free parking for **Judges** ~~ALJs~~ may be made by the ~~Employer~~ **Agency** consistent with Government-wide regulations including 41 C.F.R. §102-74.305, concerning the criteria for assignment of parking spaces, ~~and OM Memorandum dated June 7, 2000.~~	The Agency proposal provides flexibility to change parking situations as needed.

Exhibit 2

UNITED STATES OF AMERICA
FEDERAL SERVICE IMPASSES PANEL

IN THE MATTER OF	:	
	:	
SOCIAL SECURITY ADMINISTRATION, Agency,	:	
	:	Case No. 20 FSIP 001
and	:	
	:	
INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO SOCIAL SECURITY ADMINISTRATION, Union.	:	

DECLARATION OF MARK SILVESTRI

In accordance with 28 U.S.C. § 1746, I, Mark Silvestri, make the following declaration:

I. I serve as the Director in the Office of Finance at the Social Security Administration. I have been in my position since 2005.

2. In my position as Director of Finance, I oversee the preparation and publication of all financial reports for the Social Security Administration.

3. The estimated cost of management and union time spent bargaining a new contract totals $255,376.68 for approximately four days of Ground Rules and 28 days of contract bargaining. The calculation contains three parts: salary, benefits, and overhead. This is the standard calculation the Agency uses for all reimbursable work. Travel is not included in this calculation.

4. The chart below is a true and accurate accounting of the cost of official union time used over the past six years.

	#HOURS USED BY IFPTE	COST
FY19	**14,614**	**$1,556,146**
FY18	**15,033**	**$1,597,442**
FY17	**16,588**	**1,729,927**
FY16	**14,667**	**$1,504,676**
FY15	**10,941**	**$1,108,326**
FY14	**11,888**	**$1,176,978**

5. Based on 2019 payroll figures, management' s proposal of 2,000 hours would result in an estimated $212,966 in union time costs.

I declare under penalty of perjury that the foregoing is true and correct.

Mark Silvestri

Executed on FEB 0 5 2020

Union Cost Estimates

Ground Rules Negotiations

Management Team
- 1 Chief ALJ
- 1 GS15
  - Two 3-day sessions (6 days)

Union Team
- 2 ALJs

	Number of Employees	Payroll Cost	Benefit Cost	Overhead Cost	Total Costs
Totals for a Year	4	618,772	206,259	202,876	1,027,907
Totals for 6 Days		14,279	4,760	4,682	23,721

Term Bargaining

Management Team
- 2 Chief ALJs
- 1 GS15
- 1 GS14
- 1 GS13
  - Two 8-day sessions (16 days)
  - One 3-day sessions (3 days)
  - Two 5-day sessions (10 days)

(Total of 29 Days)

Union Team
- 5 ALJs

	Number of Employees	Payroll Cost	Benefit Cost	Overhead Cost	Total Costs
Totals for a Year	10	1,294,897	431,637	424,556	2,151,089
Totals for 28 Days		139,450	46,484	45,721	231,656

Grand Totals **$ 255,376.68**

SALARY TABLE 2019-DCB

INCORPORATING THE 1.4% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 29.32%

FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE-ARLINGTON, DC-MD-VA-WV-PA

TOTAL INCREASE: 2.27%

EFFECTIVE JANUARY 2019 Annual Rates by Grade and Step

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 10
9	56,945	58,843	60,741	62,638	64,536	66,434	68,331	74,024
11	68,897	71,195	73,492	75,789	78,086	80,383	82,681	89,572
12	82,579	85,333	88,086	90,839	93,592	96,345	99,098	107,357
13	98,198	101,471	104,744	108,017	111,290	114,562	117,835	127,654
14	116,040	119,909	123,777	127,645	131,514	135,382	139,251	150,856
15	136,495	141,045	145,594	150,144	154,693	159,243	163,793	166,500 *

Management Team

- 1 Chief ALJ
- 1 GS15
  - Two 3-day sessions (6 days)

Union Team

- 2 ALJs

	Number of Employees	Salary at Step 5	Payroll Cost	Benefit %	Benefit Cost	Overhead %	Overhead Cost	Total Costs
GS-9	0	64,536	-	33.33%	-	32.79%	-	-
GS-11	0	78,086	-	33.33%	-	32.79%	-	-
GS-12	0	93,592	-	33.33%	-	32.79%	-	-
GS-13	0	111,290	-	33.33%	-	32.79%	-	-
GS-14	0	131,514	-	33.33%	-	32.79%	-	-
GS-15	4	154,693	618,772	33.33%	206,259	32.79%	202,876	1,027,907
Totals for a Year	4		618,772		206,259		202,876	1,027,907
Totals for 6 Days			14,279		4,760		4,682	23,721

SALARY TABLE 2019-DCB

INCORPORATING THE 1.4% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 29.32%

FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE-ARLINGTON, DC-MD-VA-WV-PA

TOTAL INCREASE: 2.27%

EFFECTIVE JANUARY 2019 Annual Rates by Grade and Step

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 10
9	56,945	58,843	60,741	62,638	64,536	66,434	68,331	74,024
11	68,897	71,195	73,492	75,789	78,086	80,383	82,681	89,572
12	82,579	85,333	88,086	90,839	93,592	96,345	99,098	107,357
13	98,198	101,471	104,744	108,017	111,290	114,562	117,835	127,654
14	116,040	119,909	123,777	127,645	131,514	135,382	139,251	150,856
15	136,495	141,045	145,594	150,144	154,693	159,243	163,793	166,500 *
AL-3/C	128,200							

Management Team

- 2 Chief ALJs
- 1 GS15
- 1 GS14
- 1 GS13
  - Two 8-day sessions (16 days)
  - One 3-day sessions (3 days)
  - Two 5-day sessions (10 days)

(Total of 29 Days)

Union Team

- 5 ALJs

	Number of Employees	Salary at Step 5	Payroll Cost	Benefit %	Benefit Cost	Overhead %	Overhead Cost	Total Costs
GS-9	0	64,536	-	33.33%	-	32.79%	-	-
GS-11	0	78,086	-	33.33%	-	32.79%	-	-
GS-12	0	93,592	-	33.33%	-	32.79%	-	-
GS-13	1	111,290	111,290	33.33%	37,097	32.79%	36,488	184,875
GS-14	1	131,514	131,514	33.33%	43,838	32.79%	43,119	218,472
ALJ - AL-3/C	7	128,200	897,400	33.33%	299,136	32.79%	294,229	1,490,765
GS-15	1	154,693	154,693	33.33%	51,565	32.79%	50,719	256,977
Totals for a Year	10		1,294,897		431,637		424,556	2,151,089
Totals for 28 Days			139,450		46,484		45,721	231,656

SALARY TABLE 2019-DCB

INCORPORATING THE 1.4% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 29.32%

FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE-ARLINGTON, DC-MD-VA-WV-PA

TOTAL INCREASE: 2.27%

EFFECTIVE JANUARY 2019 Annual Rates by Grade and Step

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 10
9	56,945	58,843	60,741	62,638	64,536	66,434	68,331	74,024
11	68,897	71,195	73,492	75,789	78,086	80,383	82,681	89,572
12	82,579	85,333	88,086	90,839	93,592	96,345	99,098	107,357
13	98,198	101,471	104,744	108,017	111,290	114,562	117,835	127,654
14	116,040	119,909	123,777	127,645	131,514	135,382	139,251	150,856
15	136,495	141,045	145,594	150,144	154,693	159,243	163,793	166,500 *
AL-3/C	128,200							

Official Time and Bargaining Unit Employees by Fiscal Year												
Fiscal Year	IFPTE			Salary ALJ AL-3/C	Hourly Rate	Payroll Cost	Benefit %	Benefit Cost	Overhead %	Overhead Cost	Total Costs
	Bargaining Unit Ees	Official Time Used	Hours per BU Ee.								
2014	1,196	11,888	9.94	121,100	60.55	719,818	29.83%	214,731	33.67%	242,379	1,176,928
2015	1,292	10,941	8.47	122,300	61.15	669,042	31.69%	212,022	33.97%	227,262	1,108,326
2016	1,359	14,667	10.79	123,500	61.75	905,687	33.29%	301,548	32.84%	297,441	1,504,676
2017	1,403	16,588	11.82	124,700	62.35	1,034,262	33.46%	346,097	33.80%	349,569	1,729,927
2018	1,392	15,033	10.8	126,400	63.20	950,086	33.38%	317,160	34.75%	330,196	1,597,442
2019	1,267	14,614	11.53	128,200	64.10	936,757	33.33%	312,256	32.79%	307,133	1,556,146
Estimate											
2019		2,000		128,200	64.10	128,200	33.33%	42,734	32.79%	42,033	212,966

Benefits % (2019)

Fy	Fmth Num	Cas Org Cd	Fcas Org A	Cas Wklfn	Cas Wklsfn	Computed_Wkld_Nm	Fct Nm	Actvt 00
2019	12	0000	SSA	11		PERSONNEL COMPENSATION	C	5,383,818,423
2019	12	0000	SSA	12		CHANGES AND OTHER BENEFITS	C	1,794,623,650
								33.33%

Benefits % (2018)

Fy	Fmth Num	Cas Org Cd	Fcas Org A	Cas Wklfn	Cas Wklsfn	Computed_Wkld_Nm	Fct Nm	Actvt 00
2018	12	0000	SSA	11		PERSONNEL COMPENSATION	C	5,250,192,728
2018	12	0000	SSA	12		CHANGES AND OTHER BENEFITS	C	1,752,631,750
								33.38%

Benefits % (2017)

Fy	Fmth Num	Cas Org Cd	Fcas Org A	Cas Wklfn	Cas Wklsfn	Computed_Wkld_Nm	Fct Nm	Actvt 00
2017	12	0000	SSA	11		PERSONNEL COMPENSATION	C	5,109,113,712
2017	12	0000	SSA	12		CHANGES AND OTHER BENEFITS	C	1,709,671,036
								33.46%

Benefits % (2016)

Fy	Fmth Num	Cas Org Cd	Fcas Org A	Cas Wklfn	Cas Wklsfn	Computed_Wkld_Nm	Fct Nm	Actvt 00
2016	12	0000	SSA	11		PERSONNEL COMPENSATION	C	5,094,969,730
2016	12	0000	SSA	12		CHANGES AND OTHER BENEFITS	C	1,696,369,194
								33.29%

Benefits % (2015)

Fy	Fmth Num	Cas Org Cd	Fcas Org A	Cas Wklfn	Cas Wklsfn	Computed_Wkld_Nm	Fct Nm	Actvt 00
2015	12	0000	SSA	11		PERSONNEL COMPENSATION	C	5,083,447,528
2015	12	0000	SSA	12		CHANGES AND OTHER BENEFITS	C	1,610,962,253
								31.69%

Benefits % (2014)

Fy	Fmth Num	Cas Org Cd	Fcas Org A	Cas Wklfn	Cas Wklsfn	Computed_Wkld_Nm	Fct Nm	Actvt 00
2014	12	0000	SSA	11		PERSONNEL COMPENSATION	C	4,905,029,242
2014	12	0000	SSA	12		CHANGES AND OTHER BENEFITS	C	1,463,230,318
								29.83%

SSA Overhead % (2019)

Fiscal Year	Month2	Activity	Componer	Componer	Workload	Cas Workl	Cas Workl	Workload	CPWY	CUM PRO(	CUM WY	OTHER OBJECTS COST	PERSONNEL COST	TOTAL COST
2019	OCT-SEP	ACTIVITY CON 00	SSA	0000	1			Total SSA	165,400		64,571.40	3,501,669,208	7,178,442,073	10,680,111,281
														32.79%

SSA Overhead % (2018)

Fiscal Year	Month2	Activity	Componer	Componer	Workload	Cas Workl	Cas Workl	Workload	CPWY	CUM PRO(	CUM WY	OTHER OBJECTS COST	PERSONNEL COST	TOTAL COST
2018	OCT-SEP	ACTIVITY CON 00	SSA	0000	1			Total SSA	167,475		64,087.25	3,730,193,246	7,002,824,478	10,733,017,724
														34.75%

SSA Overhead % (2017)

Fiscal Year	Month2	Activity	Componer	Componer	Workload	Cas Workl	Cas Workl	Workload	CPWY	CUM PRO(	CUM WY	OTHER OBJECTS COST	PERSONNEL COST	TOTAL COST
2017	OCT-SEP	ACTIVITY CON 00	SSA	0000	1			Total SSA	161,045		63,957.82	3,481,319,335	6,818,784,748	10,300,104,083
														33.80%

SSA Overhead % (2016)

Fiscal Year	Month2	Activity	Componer	Componer	Workload	Cas Workl	Cas Workl	Workload	CPWY	CUM PRO(	CUM WY	OTHER OBJECTS COST	PERSONNEL COST	TOTAL COST
2016	OCT-SEP	ACTIVITY CON 00	SSA	0000	1			Total SSA	153,650.18		65,814.39	3,321,053,948	6,791,338,925	10,112,392,873
														32.84%

SSA Overhead % (2015)

Fiscal Year	Month2	Activity	Componer	Componer	Workload	Cas Workl	Cas Workl	Workload	CPWY	CUM PRO(	CUM WY	OTHER OBJECTS COST	PERSONNEL COST	TOTAL COST
2015	OCT-SEP	ACTIVITY CON 00	SSA	0000	1			Total SSA	151,395.089		66,965.02	3,443,765,359	6,694,409,780	10,138,175,140
														33.97%

SSA Overhead % (2014)

Fiscal Year	Month2	Activity	Componer	Componer	Workload	Cas Workl	Cas Workl	Workload	CPWY	CUM PRO(	CUM WY	OTHER OBJECTS COST	PERSONNEL COST	TOTAL COST
2014	OCT-SEP	ACTIVITY CON 00	SSA	0000	1			Total SSA	150,136.505		63,949.83	3,232,944,383	6,368,259,560	9,601,203,943
														33.67%

AALJ Summary of Outstanding Proposals

Yellow Highlighting indicates disputed language // **Bold** indicates proposed new/added language // ~~Strikethroughs~~ indicate language proposed to be removed. Blue is used to strike through Agency Explanation. Red are additions by AALJ.

ARTICLE 1 Duration and Termination					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 04/12/19- Union submitted Union 2 • 04/18/19- Agency submitted Management 2 • 06/17/19-06/20/19- Concentrated Mediation • 06/20/19- Agency submitted Management FINAL/LBO • 06/20/19- Union submitted Union FINAL/LBO					
	Agency Proposed Language		**Union Proposed Language**		**Explanation**
1	L.5-8	Section 1 **– Effective Date** This Agreement will be implemented and become effective per the Parties' ~~February 4, 2010~~ **October 18, 2018**, Ground Rules MOU.	L.5-9	Section 1 **– Effective Date** This Agreement will be implemented and become effective per the Parties' ~~February 4, 2010~~ **October 18, 2018**, Ground Rules MOU **subject to the execution of the parties' collective bargaining agreement (CBA).**	The Union seeks to include language requiring implementation of the Agreement not only consistent with the Ground Rules, but also subject to the execution of the parties' collective bargaining agreement (CBA). The Agency rejects the implementation of the contract being subject to the execution of the parties' collective bargaining agreement (CBA).
2	L.10-17	This Agreement shall remain in effect for a period of ~~four (4)~~ **seven** years from its effective date and shall automatically renew from year to year thereafter except where changes in the law, rule, or regulation mandate modification of the agreement. In addition, the Parties may extend for a longer period by mutual consent. ~~However, either Party may give notice to the other Party, in writing, at least sixty (60) days, but not more than one-hundred-five (105) days prior to the expiration date of its intention to reopen, amend, modify, or terminate this agreement.~~	L.10-21	This Agreement shall remain in effect for a period of ~~four (4)~~ **three** years **pursuant to 5 U.S.C. 7111(f)(3)** from its effective date and shall automatically renew from year to year thereafter except where changes in the law, rule, or regulation mandate modification of the agreement. In addition, the Parties may extend for a longer period by mutual consent. However, either Party may give notice to the other Party, in writing, at least sixty (60) days, but not more than one-hundred-five (105) days prior to the expiration date of its intention to reopen, amend, modify, or terminate this agreement. **Future term contract negotiations will be done via technology as determined by the Agency, and each negotiation team will be only have four members, unless mutually agreed to, in order to reduce costs.**	There is a dispute regarding the duration of the CBA, with the Agency proposing seven years and the Union proposing three years, pursuant to the "contract bar rule," which is 5 U.S.C. 7113(f)(3). The Agency is proposing relocation of the notice language for CBA changes to later in the Article. The Union is proposing keeping the notice To reduce costs, the Union is proposing to reduce the number of negotiators to four, and to conduct negotiations via technology. The Agency rejects this language.

Yellow Highlighting indicates disputed language// **Bold** indicates proposed new/added language// ~~Strikethroughs~~ indicate language proposed to be removed

3	L.19-27	**Section 3 – Termination Notice and Ground Rules Negotiations** **However, either Party may give written or electronic notice of its intent to add, amend, reopen, modify or terminate existing Articles of this Agreement not more than one hundred ~~twenty~~ five or less than ~~ninety~~ sixty calendar days prior to the expiration date.** Ground rule**s** negotiations will then begin no later than forty-five ~~(45)~~ calendar days after receipt of the notice provided by either Party. Such ground rule negotiations shall be conducted in accordance with Article 2, Section **4** ~~5~~, as to number of bargaining days, number of negotiators, payment of travel and per diem, and location.	L.22-27	**Section 3 – Termination Notice and Ground Rules Negotiations** Ground rule**s** negotiations will then begin no later than forty-five ~~(45)~~ calendar days after receipt of the notice provided by either Party. Such ground rule negotiations shall be conducted in accordance with Article 2, ~~Section 5,~~ as to number of bargaining days, number of negotiators, payment of travel and per diem, and location.	The Agency proposes relocating the notice provision of CBA changes to this portion of the Article.
4	Sec.5 L. 38-49	Unless otherwise specifically preserved in this Agreement, this Agreement supersedes all prior Memoranda of Understanding, Supplemental Agreements, or any other written agreements agreed to by the Parties prior to the ~~Employer~~ **Agency's** ~~November 30, 2009~~ **June 18, 2018**, notice to terminate such agreements, and such agreements shall cease to have effect and control. In order to change any Memoranda of Understanding, Supplemental Agreements, or any other written agreements agreed to by the Parties between ~~November 30, 2009~~ **June 18, 2018** (~~Employer~~ **Agency's** notice date) and the effective date of this Agreement and that are not covered by this Agreement (as defined by **the Federal Labor Relations Authority** (FLRA) case law), the ~~Employer~~ **Agency** shall provide notice and, upon	Sec.4 L.33-57	~~Unless otherwise specifically preserved in this Agreement, this Agreement supersedes all prior Memoranda of Understanding, Supplemental Agreements, or any other written agreements agreed to by the Parties prior to the Employer November 30, 2009, notice to terminate such agreements, and such agreements shall cease to have effect and control. In order to change any Memoranda of Understanding, Supplemental Agreements, or any other written agreements agreed to by the Parties between November 30, 2009 (Employer notice date) and the effective date of this Agreement and that are not covered by this Agreement (as defined by (FLRA) case law), the Employer shall provide notice and, upon request, bargain with the AALJ to the extent required by 5 U.S.C. Chapter 71.~~ This Agreement supersedes all past	The current languageprovides that it supersedes all prior MOUs, Supplemental Agreements, or any other written agreements agreed to by the Parties prior to SSA's notice to terminate the expired CBA. The Agency proposes maintaining this language, while the Union proposes language indicating that specific MOUs remain in effect.

Yellow Highlighting indicates disputed language// **Bold** indicates proposed new/added language// ~~Strikethroughs~~ indicate language proposed to be removed

		request, bargain with the AALJ to the extent required by 5 U.S.C. Chapter 71. This Agreement supersedes all past practices unless they were in effect on the date of this Agreement and not covered by this Agreement, as defined by FLRA case law.		practices ~~and~~ ~~**memoranda of understandings, supplemental agreements, and any other written agreements agreed to by**~~ ~~**the parties**~~ unless they were in effect on the date of this Agreement~~**, and do not conflict with any provisions of** by this Agreement, as defined by FLRA case law.~~ **The parties agree that the** following list of memoranda of understanding will remain in effect: ALJ Office SpaceMOU **dated February 11, 2015; Reassignment to new offices where offices have been established dated June 22, 2015; Elimination of Outlook Web Access MOU dated March 3, 2016; WebTA MOU dated June 14, 2016; Lincoln, NE Satellite Hearing Office MOU dated January 26, 2017; SSA/IFPTE Ground Rules dated October 18, 2018 and Portland Office MOU dated January 23, 2018. The parties agree that the following list of memoranda of understanding will no longer be in effect: Decision to Conduct 2013 Judicial Training dated March 11, 2013; 2014 Judicial Training dated March 13, 2014; Expansion Remodel Portland Hearing Office dated April 30, 2014; 2015 Judicial Training MOU dated April 21, 2015; 2016 Judicial Training MOU dated April 6, 2016; Relocation of the Atlanta North HO dated August 12, 2016; Relocation New Orleans ODAR dated August 29, 2016; Temp Expansion of Telework to Expedite renovation of Charleston, SC HO dated September 22, 2016; and Tulsa**	

Yellow Highlighting indicates disputed language// **Bold** indicates proposed new/added language// ~~Strikethroughs~~ indicate language proposed to be removed

				Hearing Location MOU dated October 20, 2016.	

ARTICLE 5 Employee Rights					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 03/18/19- Union submitted Union 2 • 03/19/19- Agency submitted Management 2 • 04/05/19- Union submitted package deal (A.5, A.13) • 04/10/19- Agency submitted Management 3 • 04/10/19- Union submitted Union 3 • 04/11/19- Union submitted Union 4 as part of package deal dated 04/11/19 (A.5 & 13) • 04/17/19- Agency submitted Management 4 • 05/08/19- Union submitted Union 5 • 06/17/19-06/20/19- Concentrated Mediation • 06/17/19- Agency submitted package deal 8 (A.5, A.9, A.17) • 06/19/19- Union submitted Union FINAL/LBO • 06/20/19 – Agency submitted Management FINAL/LBO					
	Agency Proposed Language		**Union Proposed Language**		**Explanation**
5	L.28-42	Consistent with their appointment ~~under the Administrative Procedure Act and the United States Office of Personnel Management (OPM) approved position description,~~ Judges ~~shall~~ **may** not ~~be required to~~ perform duties ~~or assignments~~ inconsistent with the**ir** duties and responsibilities ~~of an~~ **as** administrative law judge as set forth in 5 U.S.C. §3105 ~~and 5 C.F.R. §930.209. An administrative law judge may be assigned to perform duties with approval of OPM and pursuant to 5 C.F.R. §930.209.~~ ~~**Regardless of applicable laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business), employees Judges and their exclusive union representatives are prohibited from audio or video recording while on**~~	L.22-37	Consistent with their appointment under the Administrative Procedure Act and the United States Office of Personnel Management (OPM) approved position description, Judges ~~shall~~ may not be required to perform duties ~~or assignments~~ inconsistent with the**ir** duties and responsibilities ~~of an~~ **as** administrative law judge**s** as set forth in 5 U.S.C. §3105 ~~and 5 C.F.R. §930.209~~. ~~An administrative law judge may be assigned to perform duties with approval of OPM and pursuant to 5 C.F.R. §930.209~~. ~~**Regardless of applicable laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business), Judges, agency officials and union representatives are prohibited from audio or video recording while engaging in labor management proceedings to include but not limited to Weingarten examinations and**~~	The Agency proposes to eliminate the prohibition of judges performing duties inconsistent with their appointments under the Administrative Procedures Act and their OPM approved position description. The Union rejects this proposed change, as the Agency's proposal directly violates 5 USC 3105.

Yellow Highlighting indicates disputed language// **Bold** indicates proposed new/added language// ~~Strikethroughs~~ indicate language proposed to be removed

		~~duty, or conducting union business, or engaging in labor-management proceedings.~~ Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business or any Agency internal security measures), Judges, their representatives, and managers are prohibited from audio or video recording during any interaction between any of these parties. Judges will be put on notice of this provision.		**~~formal discussions. If a recording is made in violation of this provision, it will not be admitted by either party in an arbitration governed by this agreement.~~ Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business) Judges, their representatives, and managers are prohibited from audio or video recording during any interaction between any of these parties. Judges will be put on notice of this provision.**	The Agency's proposed language is to permit the it to make audio and video recordings during any interaction between any of the parties when the Agency characterizes them as an internal security measure. This is a proposal for a statutory waiver of jurisdictional laws mandating mutual consent for recording. As such, the Union rejects this proposal.
6	L.84-100	Examinations~~, Meetings, and Investigations~~ ~~Disciplinary Examinations~~ Consistent with 5 U.S.C. §7114(a)(2)(B), as the exclusive representative, the AALJ shall be given an opportunity to be present at any examination of a Judge in the unit by a representative of the ~~Employer~~ **Agency** in connection with an investigation if the Judge reasonably believes that the examination may result in disciplinary action against the Judge and the Judge requests representation. When the manager is aware that a meeting may result in disciplinary action, the manager will inform the Judge of the general purpose of the meeting ~~and will inform the Judge of his or her right to have an AALJ representative present if he or she chooses~~. Upon request, the Judge, in such instance, has the right to have an AALJ representative present at such examination pursuant to Article 6 and no ~~further~~ questioning shall take	L.74-87	Examinations, Meetings, and Investigations Disciplinary Examinations Consistent with 5 U.S.C. §7114(a)(2)(B), as the exclusive representative, the AALJ shall be given an opportunity to be present at any examination of a Judge in the unit by a representative of the ~~Employer~~ **Agency** in connection with an investigation if the Judge reasonably believes that the examination may result in disciplinary action against the Judge and the Judge requests representation. When the manager is aware that a meeting may result in disciplinary action, the manager will inform the Judge of the general purpose of the meeting and will inform the Judge of his or her right to have an AALJ representative present if he or she chooses. Upon request, the Judge, in such instance, has the right to have an AALJ representative present at such examination pursuant to Article 6 and no further questioning shall take place until the Judge's representative is present (normally not more than one week) as provided by this section.	The issue is whether the Agency management official must inform a Judge of his/her statutory right to union representation at investigatory examinations.

Yellow Highlighting indicates disputed language// **Bold** indicates proposed new/added language// ~~Strikethroughs~~ indicate language proposed to be removed

		place until the Judge's representative is present **(normally not more than one week)** as provided by this section ~~**normally not more than one week.**~~			
7	L.102-113	If **an examination has commenced, a Judge requests an AALJ representative, and** ~~the~~ **an** AALJ representative is unavailable, the examination shall be terminated and rescheduled as soon as ~~the~~ **an** AALJ representative has become available provided no unreasonable delay occurs, **normally not more than one week.** ~~The Parties recognize that while in person representation is preferred, telephonic participation by the AALJ representative is permitted~~ **If an AALJ representative cannot personally attend, ~~M~~meetings may be held utilizing appropriate technology as determined by the Agency**. When in person representation is not possible, due to travel hearing schedule conflicts for example, but the Judge has requested his or her appointed AALJ representative participate by telephone, the Employer agrees that telephonic representation should be permitted.	L.88-97	If ~~the~~ **an** AALJ representative is unavailable, the examination shall be terminated and rescheduled as soon as ~~the~~ **an** AALJ representative has become available provided no unreasonable delay occurs, **not normally more than one week**. **If an AALJ representative cannot personally attend, meetings may be held utilizing appropriate technology as determined by the Agency.** ~~The Parties recognize that while in person representation is preferred, telephonic participation by the AALJ representative is permitted.~~ When in-person representation is not possible, due to travel hearing schedule conflicts for example, but the Judge has requested his or her appointed AALJ representative participate by telephone, the Employer **Agency** agrees that telephonic representation should be permitted.	The Parties are in substantive agreement about when a Weingarten meeting should be postponed. The Agency's language attempts to clarify two different situations: (1) before the Weingarten has commenced, and (2) when the Weingarten has commenced.
8	L.188-191	~~Section 5~~ ~~ODAR has decided that the time frames set forth in the Benchmarks for case processing contained in the CPMS report are guidelines for the management officials and will not be used as a source of any disciplinary or performance action. The Judges are encouraged by ODAR to aim to meet the guidelines and cooperate with benchmark reports.~~	L.154-162	Section 5 – ~~**Benchmarks**~~ **Case Processing Guidelines** ~~OHO~~ ~~**The Agency** has decided that the **t**~~**T**ime frames **established by the Agency** ~~set forth in the Benchmarks~~ for case processing ~~contained in the CPMS report are~~ guidelines **such as ALPO, EDIT, POST, etc., will not be used as a source of any disciplinary or performance action**. **The Parties agree that such timelines are tolled during any period of approved leave, office closures, weekends, holidays and any other period of time when a**	The Agency proposes elimination of the protection of judges from being subject to discipline pursuant to benchmarks (renamed by the Agency as "Service Delivery Dates" with reduced completion times on 1/9/2020). Further, the Agency rejects Union proposed language that establishes the tolling of benchmarks when judges are on approved leave or out of the office due to circumstances beyond their control.

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				Judge is out of the office due to circumstances beyond their control. ~~for the management officials and will not be used as a source of any disciplinary or performance action.~~ The Judges are encouraged by the **Agency** to aim to meet the guidelines and cooperate with benchmark reports.	
9	L.193-198	Section 4 – Complaints Regarding ~~Attorney and Non-Attorney~~ Representatives A Judge may provide written ~~adverse~~ information **regarding suspected violations of the rules pertaining to a representative's conduct pursuant to Agency policy.** ~~about an attorney or non-attorney representative directly to the Office of General Counsel; a copy of the information will also be simultaneously provided to the appropriate RCALJ.~~	L.164-170	Section 6 – Complaints Regarding ~~Attorney and Non-Attorney~~ Representatives A Judge may provide written ~~adverse~~ information **regarding suspected violations of the rules pertaining to a representative's conduct ~~about~~ ~~an attorney or non-attorney~~ ~~a representative~~ ~~directly~~ to the Office of General Counsel through their HOCALJ, and should seek guidance and follow the requirements currently set forth in the relevant HALLEX provision.** ~~the Office of General Counsel; a copy of the information will also be simultaneously provided to the appropriate RCALJ~~.	The expired CBA includes language regarding how complaints against claimant representatives should be handled. The Agency proposes removing the specific steps to be taken and noting reports should be made pursuant to Agency policy. The Union proposes adding language from HALLEX, which is newly implemented Agency policy, in order for it to be enforceable under the CBA, as well as to be educational.
10	L.202-205	Complaints Regarding a Judge Any observation or complaint regarding a Judge's conduct occurring outside of the hearings and appeals process that may be used to propose discipline will be **processed pursuant to Agency policy and consistent with applicable law** ~~brought to the attention of the Judge as soon as possible after the receipt of the complaint~~.	L.172-180	Complaints Regarding a Judge Any observation or complaint regarding a Judge's conduct occurring outside of the hearings and appeals process that may be used to propose discipline will be **processed pursuant to Agency policy and consistent with applicable laws** brought to the attention of the Judge as soon as possible after the receipt of the complaint ~~**but no later than ten work days from the date the complaint was submitted against the Judge, unless such disclosure is prohibited by law.**~~ **The Agency must provide any investigative report, whose disclosure is not otherwise prohibited by law, ~~made concerning the complaint~~ to the Judge upon its conclusion. If the disclosure is prohibited by law, the Agency shall cite the**	. The Agency proposes to eliminate the requirement to bring complaints to the attention of the judge as soon as possible after the receipt of the complaint. The Union proposes to keep the language. The Union proposes language that requires the Agency to provide any investigative report, so long as it is not prohibited by law, and requires the Agency to cite under which law lies the prohibition. The Agency rejects this language.

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				applicable law that prevents disclosure.	
11	L.224-233	~~The Employer will encourage law enforcement officials to pursue allegations of criminal conduct violative of 18 U.S.C. §111 (Assaulting, Resisting or Impeding Certain Officers or Employees), §115 (Influencing, Impeding or Retaliating Against a Federal Official by Threatening or Injuring a Family Member), §372 (Conspiracy to Impede or Injure Officer), §876 (Mailing Threatening Communications), §1111 (Murder), §1112 (Manslaughter), §1113 (Attempt to Commit Murder or Manslaughter), §1114 (Protection of Officers and Employees of the United States), §1117 (Conspiracy to Murder), §1201 (Kidnapping) and 42 U.S.C. §1320a-8b (Attempts to Interfere with Administration of Social Security Act) involving any Judge while engaged in or on account of the performance of any Judge's official duties where the Employer determines such action is warranted.~~	L.193-204	**The Agency shall notify law enforcement officials of any and all credible claims of threat of harm against any Judge within the Agency.** ~~The Employer will encourage law enforcement officials to pursue allegations of criminal conduct violative of 18 U.S.C. §111 (Assaulting, Resisting or Impeding Certain Officers or Employees), §115 (Influencing, Impeding or Retaliating Against a Federal Official by Threatening or Injuring a Family Member), §372 (Conspiracy to Impede or Injure Officer), §876 (Mailing Threatening Communications), §1111 (Murder), §1112 (Manslaughter), §1113 (Attempt to Commit Murder or Manslaughter), §1114 (Protection of Officers and Employees of the United States), §1117 (Conspiracy to Murder), §1201 (Kidnapping) and 42 U.S.C. §1320a-8b (Attempts to Interfere with Administration of Social Security Act) involving any Judge while engaged in or on account of the performance of any Judge's official duties where the Employer determines such action is warranted.~~	The Union proposes adding language that the Agency be required to notify law enforcement officials of any and all credible threats against a Judge. The Agency rejects this language and will not agree to notify law enforcement of a credible threat against a judge.
12	L.277-278	**The Agency and the AALJ share a mutual interest in assisting a Judge who is adversely affected by a RIF consistent with applicable law and regulation.**	L.235-236	**The Agency and the AALJ share a mutual interest in assisting a Judge who is adversely affected by a RIF.**	The Parties agree that the Agency will assist Judges with RIF actions, but the Agency proposes to add language that the assistance be consistent with applicable law and regulation.
13	L.298-300	~~**If the formal discussion requirements of 5 U.S.C. §7114(a)(2)(A) are met,** T~~the AALJ has the right to be present during questioning of potential **AALJ** bargaining unit witnesses for any third party hearing **to the extent required by 5 U.S.C. Chapter 71.**	L.253-256	The AALJ has the right to be present during questioning of potential bargaining unit witnesses for ~~**any third-party hearings concerning matters that fall within the AALJ's representational duties.**~~ any third-party hearing.	The Agency proposes a statutory waiver to limit when an AALJ representative may be present for a third party hearing where a Judge serves as a witness. The Union rejects this statutory waiver.
14	L.306-307	**Judges must be on non-duty or lunch time when accessing electronic messages from the AALJ.**	L.259-263	**The parties agree to adhere to the SSA Policy on Limited Personal Use of Government Office Equipment Including**	The Agency seeks to limit Judges' access to AALJ emails, singling out Union emails over all over non-Agency email.. The Union proposes

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				Information Technology. As such, Federal employees are permitted limited use of government office equipment for personal needs if the use does not interfere with official business and involves minimal additional expense to the government.	language that the parties comply with the SSA Policy on Limited Personal Use of Government Office Equipment Including Information Technology.

ARTICLE 9 Official Time					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 04/15/19 – Agency submitted Management 2 • 06/05/19- Union submitted Union 2 (Section 1 & Section 7 are a a package and are to be considered together) • 06/17/19-06/20/19- Concentrated Mediation • 06/17/19- Agency submitted package deal 8 (A.5, A.9, A.17) • 06/20/19 – Agency submitted Management FINAL/LBO • 06/21/19 – Union submitted Union FINAL/LBO					
	Agency Proposed Language			**Union Proposed Language**	**Explanation**
15		**Union** time		Official time	The Agency is proposing the change to "union" time, while the Union maintains the current statutory language of "official" time.
16		*No proposed language*	L.13-25	**Consistent with** 5 U.S.C. §7131, **official** time shall be granted, **consistent with the statute, ~~O~~official time will not be unreasonably denied~~,~~. ~~a~~And as such, the Agency will contemporaneously provide a credible justification for all denials of requests for official time. The response to the official time request must take place prior to the commencement of the requested representational activity. If the Agency fails to respond, the representative will not be disciplined for engaging in the representational activity. Union representatives must make a good faith effort to reach an approving agency official. If official time is**	The Union proposes language making official time granted based on the statutory standard instead. Further, the Union proposes that the Agency provide contemporaneous credible justification for all denials of statutory official time. The Agency rejects this proposal.

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				denied, any timelines, including grievance and arbitration timelines, are ~~waived~~ tolled, until such time the dispute over the official time denial is resolved. The Union President or designee will notify the Agency of the union representatives entitled to reasonable official time.	
17	L.92-95	~~Official~~ **Union** time may only be used on the days and during the times that an AALJ official would be otherwise in a duty status~~,~~ ~~but may on occasion involve extended work days and weekends including Sunday (i.e. bargaining or hearing preparation).~~ Internal AALJ business will be conducted on non-duty time.	L.81-84	Official time may only be used on the days and during the times that an AALJ official would be otherwise in a duty status, but may on occasion involve extended work days and weekends including Sunday (i.e. bargaining or hearing preparation). Internal AALJ business will be conducted on non-duty time.	The Agency is proposing changes to official time, by eliminating the ability to use official time on credit hours including on the weekends. The Union proposes to maintain the current language.
18	L.97-102	~~Official time may be used to claim credit hours if representation activities or negotiations (as noted in paragraph A, above) last longer than normal duty hours during a workday or occur on a weekend in accordance with the provisions of the credit hour plan contained in Hours of Work, Article 14.~~ **Union time is not permitted on telework (including work at home by exception), or outside the time the union representative would otherwise be in duty status.**	L.85-88	~~Official time may be used to claim credit hours if representation activities or negotiations (as noted in paragraph A, above) last longer than normal duty hours during a workday or occur on a weekend in accordance with the provisions of the credit hour plan contained in Hours of Work, Article 14.~~	The Agency seeks to eliminate the Union's ability to use official time while teleworking or work at home by exception, or use official time away from their duty station, which is the current practice consistent with a MOU, entitled, "Elimination of Outlook Web Access MOU" dated March 2, 2016. The Union seeks to maintain the flexibility to perform official time away from their duty stations, including on telework days, and while on work at home by exception, per Lines 118-121 of this Article and the MOU entitled, "Elimination of Outlook Web Access MOU" dated March 2, 2016.
19	L.104-105	**Union time is not permitted for any union-sponsored training, meeting, or conference held at a restaurant, casino hotel, spa resort/hotel, or any other similar type of facility.**		*No proposed language*	
20	L.109-120	**Union time is not permitted for a Judge who:**		*No proposed language*	The Agency proposed prohibiting Official Time if a judge receives a

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		Is subject to a workload or policy compliance directive in the prior six months			workload or policy compliant directive. The Union rejects this proposed language.
21	L.133-142	**With prior supervisory approval, a** Judge~~s~~ covered by this Agreement will be accorded reasonable duty time **as determined by the Agency**, not charged to ~~official~~ **union** time, to consult with an **SSA** AALJ representative for representational purposes or for representing themselves consistent with the terms of this Agreement and applicable regulations and law. This includes time for preparation, attendance (at meetings and/or hearings) and travel of the Judge for matters such as, grievance/arbitration, FLRA, MSPB, EEO, or other disciplinary actions, adverse action proceedings, and ULP charges and/or complaints. The Judge will ~~make every reasonable effort to~~ request and have advance approval of such use of duty time. The Judge ~~will~~ **must** continue to **perform Agency assigned work in accordance with Agency expectations.** ~~administer and control his/her hearing case docket in a manner that is in the best interest of the public~~.	L.99-107	**A** Judge covered by this Agreement will be accorded reasonable duty time not charged to official time, to consult with an **SSA** AALJ representative for representational purposes or for representing themselves consistent with the terms of this Agreement and applicable regulations and law. This includes time for preparation, attendance (at meetings and/or hearings) and travel of the Judge for matters such as, grievance/arbitration, FLRA, MSPB, EEO, or other disciplinary actions, adverse action proceedings, and ULP charges and/or complaints. ~~make every reasonable effort to administer and control his/her hearing case docket in a manner that is in the best interest of the public~~.	The Agency proposal requires prior approval to speak with a Union representative, and the granting of reasonable time will be determined by the Agency. The Union rejects the proposed changes to require prior approval as well as the granting of reasonable time be the determination of the Agency.
22	L.146-152	The AALJ President will provide the Office of Labor Management and Employee Relations (OLMER) with electronic lists of all designated union representatives within thirty ~~(30)~~ days of the effective date of this Agreement. The AALJ President will continue to provide OLMER with updated summary lists as necessary. Each list will	L.108-115	The AALJ President will provide the Office of Labor Management and Employee Relations (OLMER) with electronic lists of all designated union representatives within thirty ~~(30)~~ days of the effective date of this Agreement. The AALJ President will continue to provide OLMER with updated summary lists as necessary. ~~Each list will include the name~~, ~~designated official time caps based on position type~~	The Union proposed to simplify the reporting of union representatives to the Agency. The Agency rejected this proposal.

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		include the name, ~~designated official time caps based on position type listed in Section 8B available to the representative (i.e., 1,872, 1,664, 1,400, 1,352, 1,248, 1,040, 300 and 208 hours),~~ duty location, and telephone number of each designated union representative.		~~listed in Section 8B available to the representative (i.e., 1,872, 1,664, 1,400, 1,352, 1,248, 1,040, 300 and 208 hours), duty location, and telephone number of each designated union representative.~~	
23	L.159-164	~~Official~~ **Union** time ~~need not be~~ **must be** requested in advance of use~~.~~**, and an authorizing official must approve the request prior to engaging in union time. A representative who uses union time without advance management approval will be considered absent without leave and subject to appropriate disciplinary action. The representative will inform the authorizing official when he/she returns to work after completion of the representational activity.**	L.118-121	Official time need not must be requested in advance of use **and need not be performed at the union representative's permanent duty station.**	The Agency proposes that official time must be requested in advance. Further, the Agency proposes that should a Union official perform representational duties without prior approval, the Union official will be considered absent without leave and subject to discipline. Further, the Agency proposes that the Union can only perform representational work at their duty station. The Union rejected the Agency's proposed changes, and proposed to incorporate the March 6, 2016 MOU entitled, "Elimination of Outlook Web Access" which grants Union officials the ability to work anywhere outside their duty station.
24	L.187-195	All ~~reporting~~ **requesting** of ~~official~~ **union** time will be submitted via OUTTS or equivalent electronic reporting system. ~~Reporting~~ **Requests for** ~~of official~~ **union** time ~~used~~ will be submitted ~~on a weekly basis~~ **in advance** ~~**(typically at least twenty-four hours)**~~ via OUTTS~~, unless the representative is in travel status, on leave or otherwise not available, in which case the report will be submitted as soon as practicable upon the representative's return~~. Sufficient information (time, date, representational category and specific location if other than normal duty station) must be included with the submission	L.128-135	All reporting of official time will be submitted via OUTTS or equivalent electronic reporting system. Reporting of official time used will be submitted on a weekly basis via OUTTS~~, unless the representative is in travel status, on leave or otherwise not available, in which case the report will be submitted as soon as practicable upon the representative's return~~. Sufficient information (time, date, representational category and specific location if other than normal duty station) must be included with the submission to allow the approving official to determine if the time requested and activity described met the criteria outlined in this Article.	The Agency proposes that Union representatives request official time in advance of use through the Agency approved system. The Union proposes that representatives report union time used on a weekly basis through the Agency approved system.

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		to allow the approving official to determine if the time requested and activity described met the criteria outlined in this Article.			
25	L.202-203	~~Official~~ **Consistent with 5 U.S.C. Chapter 71, union** time will be **granted for** ~~reported in~~ the following **representational activities** ~~categories~~:	L.140	Official time will be reported in the following categories:	The Agency proposes that requested official time be granted for certain representational activities consistent with statute. The Union rejects the language, and proposes to keep the current language.
26	L.221-225	The **Agency** ~~Deputy Commissioner and/or designee~~ will provide to the AALJ President ~~a monthly~~ **upon request a** report showing the ~~official~~ **union** time used for each region, the total time used for each region, the amount of ~~official~~ **union** time charged against the ~~pool~~ **bank**, and the amount of ~~official~~ **union** time remaining in the ~~pool~~ **bank**. ~~Monthly reports will be provided within 20 calendar days after the end of each month.~~	L.153-157	The **Agency** ~~Deputy Commissioner and/or designee~~ will provide to the AALJ President a monthly report showing the official time used for each region, the total time used for each region, the amount of official time charged against the ~~pool, and the amount of official time~~ remaining in the pool. Monthly reports will be provided within 20 calendar days after the end of each month.	The Agency proposed to eliminate the requirement of the Union to provide monthly reports. The Union rejects the proposal and seeks to maintain the current language.
27	L.227-230	~~All users of Official Time will make entries directly into the OUTTS system on a screen substantially similar in format and content to the screen currently in use by AFGE. The Employer will make modification to the existing OUTTS screen to comport with the terms of this Agreement (e.g. no prior approval requires, time reported weekly, etc.).~~	L.158-161	All users of Official Time will make entries directly into the OUTTS system ~~on a screen substantially similar in format and content to the screen currently in use by AFGE. The Employer will make modification to the existing OUTTS screen to comport with the terms of this Agreement (e.g. no prior approval requires, time reported weekly, etc.).~~	The Agency proposes elimination of this entire section of the Article because the requesting provisions are addressed in earlier sections. For clarity, the Union proposed to keep this language.
28	L.240-241	**The Parties agree that a bank of ~~1,500~~ 2,000 hours per fiscal year will be made available for representational duties.**		*No proposed language*	The Agency is proposing a bank of 2,000 official time hours per year. The Union rejects the proposed bank and proposes the statutory reasonable time standard.
29	L.243-246	**The AALJ President will be entitled to up to ~~400~~ 500 hours of union time per fiscal year. All other**		*No proposed language*	The Agency is proposing limits on the number of official time hours allotted to Union representatives. The Union rejects the proposed limitations

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		representatives will be entitled to up to ~~150~~ 200 hours of per fiscal year. The total distribution for all AALJ representatives may not exceed the total number of bank hours designated above.			because it has proposed the statutory reasonable time standard.
30	L.248-252	**An AALJ representative who has reached their individual cap will be authorized union time in accordance with sections 7131(a) or 7131(c) of title 5, United States Code. Time for these activities will be charged to the union bank for that fiscal year. However, if the bank has been exhausted, any further union time will be charged to the bank for the following fiscal years.**		*No proposed language*	The Agency is proposing how to handle representatives who exceed their official time limits. The Union rejects the proposed individual caps because it has proposed the statutory reasonable time standard instead.
31	L.254-257	**AALJ representatives must stagger their use of authorized union time hours over the course of the fiscal year, and must work out union time usage with the Agency to accommodate both union representational activities and Agency assigned work. A mutually agreed upon schedule is required for scheduling union time.**		*No proposed language*	The Agency proposes a statutory waiver wherein the Union would waive its legal right to designate its representatives pursuant to the requirement to "stagger" their use of official time. The Union rejects this statutory waiver.
32	L.260-262	**Time spent by AALJ representatives, representing Judges in the informal and formal stages of the EEO complaint process, is union time under this Article and is charged towards the individual caps and bank.**		*No proposed language*	The Agency proposes that time spent on EEO representational activities by Union representatives be charged as official time subject to the bank and cap provisions proposed by the Agency and rejected by the Union above. The Union rejects the proposal of a statutory waiver where Union representatives would forfeit official time pursuant to relevant EEO law and regulation which authorizes a separate category of EEO time and allows the individual to choose their own representative regardless of Union status. Further, the Union rejects the proposed bank and caps and has proposed the statutory standard.

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33	L.264-265	**Should this Agreement become effective on a day other than the first day of a fiscal year, the bank and individual caps will be prorated.**		*No proposed language*	The Agency proposes prorating the official time bank and caps depending on the effective date of the new CBA after the first day of the fiscal year. The Union rejects the Agency's proposal, having rejected the use of a bank of time and any caps in its entirety.

ARTICLE 13
Judicial Function

Bargaining History
- 02/22/19 – Agency submitted Management 1
- 02/22/19 – Union submitted Union 1
- 03/18/19 – Agency submitted Management 2
- 04/05/19- Union submitted package deal (A.5, A.13)
- 04/09/19- Union submitted Union 2
- 04/11/19- Union submitted Union 3 as part of package deal dated 04/11/19 (A.5 & A.13)
- 04/12/19- Union submitted package deal (A.13, A.17)
- 05/07/19- Agency submitted package deal (A.2, A.3, A.6, A.8, A.13, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29)
- 05/09/19- Union submitted package deal (A.3, A.13)
- 06/17/19-06/20/19- Concentrated Mediation
- 06/17/19- Agency submitted package deal 9 (A.7, A.13, A.20, A.25)
- 06/20/19 – Agency submitted Management FINAL/LBO
- 06/20/19 – Union submitted Union FINAL/LBO

	Agency Proposed Language		Union Proposed Language		Explanation
34	L.1-13	~~**JUDICIAL FUNCTION IN THE OFFICE OF HEARING OPERATIONS DISABILITY ADJUDICATION AND REVIEW**~~ ~~Judges play a vital role in the accomplishment of the ODAR **OHO** mission and make a significant contribution to the mission. of issuing hearing decisions that are timely and correct determinations by the Commissioner of the Social Security Administration. In making hearing decisions, a Judge may determine when a case is ready to be scheduled~~	L.3-35	**JUDICIAL FUNCTION** ~~**IN THE OFFICE OF HEARING OPERATIONS DISABILITY ADJUDICATION AND REVIEW**~~ Judges play a vital role and make a significant contribution to ~~in~~ the accomplishment of the ODAR **OHO Agency's** mission ~~and make a significant contribution to the mission **of the Agency**. of issuing hearing decisions that are timely and correct determinations by the Commissioner of the Social Security Administration.~~ **Judges are inferior officers appointed pursuant to 5 U.S.C. § 3105. Judges are called upon**	The Agency seeks to eliminate the Article. The Union seeks to maintain language asserting judges' significance to mission, as well as proposes the language explaining that judges are inferior officers, exercising significant discretion in conducting proceedings under the Administrative Procedure Act. The Union further proposes a description of the job duties judges perform.

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		~~for a hearing, conduct a full and fair hearing when required, and must issue a legally sufficient decision. The ODAR has the authority to provide necessary support staff for the Judges.~~		**to discharge significant duties and exercise significant discretion in conducting proceedings under the Administrative Procedure Act and laws of the United States. Judges preside over hearings conducted in accordance with 5 U.S.C. § 556 and 557. Judges decide matters of fact and law in accordance with applicable laws, rules, regulations and Agency policy pronouncements.** ~~**The Social Security Act, Administrative Procedure Act, Agency Regulations, Social Security Rulings, and other SSA policy pronouncements. An ALJ's hearings and decisions should be in accordance with the Social Security Act.**~~ **In regulating the course of ~~the~~ a hearing, a Judge** ~~may~~ **shall, among other things,** determine when a case is ready to be scheduled for a hearing **or should be postponed, admit all pertinent evidence, secure additional evidence (*e.g.* medical records, consultative examinations), make determinations** ~~**as to**~~ **regarding whether expert witnesses are needed** ~~**and the**~~ **as well as, the type of expert required.**; **The Judge** conducts a full and fair hearing**;** ~~when required, must~~ issues legally sufficient decisions**, and performs all other functions prescribed by applicable laws, rules and regulations**. ~~The OHO has the authority to provide necessary support staff to the Judges.~~ ~~**The following case citations and case law demonstrate the judicial function of Judges: 5 U.S.C. §3105 (appointment of administrative law judges); 5 U.S.C. §1305 (outline of OPM and MSPB authority when administrative law judges involved); 5 C.F.R. §930.201 *et seq.* (Administrative Law Judges Program Rules); 5 U.S.C. §2302 (prohibited personal practices); 5 U.S.C.**~~	

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				~~**§7521 (actions against administrative law judges); 5 U.S.C. §4301 (administrative law judges not included in Federal employee performance appraisal systems); 5 U.S.C. §3344 (Details: administrative law judges); 5 U.S.C. §5372 (pay system for administrative law judges); Butz v. Economou, 438 U.S. 478 (1978) ; Ramspeck v. Federal Trial Examiners Conference, 345 U.S. 128 (1953); Social Security Administration v. Robert W. Goodman, 19 M.S.P.R. 321 (1984); subject to changes in the law.**~~	

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ARTICLE 14 Hours of Work					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 03/20/19- Union submitted Union 2 • 04/17/19 – Agency submitted Management 2 • 06/06/19- Agency submitted package deal 5 (A.14 & A.31) • 06/17/19- Union submitted package deal (A.14 & A.31) • 06/17/19-06/20/19- Concentrated Mediation • 06/18/19- Agency submitted package deal 10 (A.14 & A.31) • 06/19/19- Agency submitted package deal 12 (A.14 & A.31) • 06/20/19 – Agency submitted Management FINAL/LBO • 07/03/19 – Union submitted Union FINAL/LBO					
	Agency Proposed Language		**Union Proposed Language**		**Explanation**
35	L.20-22	Credit Hours~~.~~ - Any hours within a flexible schedule established under 5 U.S.C. §6122, which are in excess of a Judge's basic work requirement and which the Judge elects to work so as to vary the length of a workweek or a workday.	L.20-22	Credit Hours~~.~~ - Any hours within a flexible schedule established under 5 U.S.C. §6122, which are in excess of a Judge's basic work requirement and which the Judge elects to work **of their own choosing** so as to vary the length of a workweek or a workday.	The Union added additional language to explain that when a Judge elects to work, it is of their own choosing.
36		*No proposed language*		**Premium Pay**	Throughout this Article, the Union seeks to assert it no longer waives its statutory and regulatory right to earn premium pay.
37		*No proposed language*	L.219-240	**Judges authorized to work flexible work schedules, and for whom credit hours are applicable, shall receive credit hours for any hours worked in excess of the basic work requirement when such work is worked at the Judge's own election or choosing.** **Judges authorized to work compressed work schedules are not eligible for credit hours, therefore qualified Judges who work hours in excess of the basic work requirement shall earn premium pay when such work is ordered, directed, or otherwise authorized and cannot reasonably be**	The Agency's position is that credit hours may only be earned between 6:30 a.m. and 6:00 p.m. The Union proposes language that grants Judges the ability to earn credit hours at their own choosing. The Union proposes language to specify the relation of different work schedules, credit hours and premium pay.

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				expected to be completed within the basic work requirement. Qualified Judges receive premium pay, to the maximum extent allowable by law. Judges who receive premium pay shall receive such pay in the form of overtime or compensatory time in lieu of overtime at the Agency's sole election. **Judges not qualified to receive premium pay as a result of exceeding the applicable premium pay cap pursuant to 5 USC 5547, shall receive credit hours to the maximum extent allowable regardless of whether the work was ordered, directed, authorized or worked at the Judge's own election or choosing.**	
38		*No proposed language*	L.238-240	**The Agency, subject to mission critical needs, will set reasonable goals and benchmarks, as much as practicable, to avoid the need for Judges working in excess of the basic work requirements.**	The Union proposes language to establish the reasonable expectation that goals and benchmarks are based on Judges not working in excess of the basic work requirements.
39	L.269-278	~~Judges will provide annual written notice to the HOCALJ or Acting HOCALJ of the Judge's request to work credit hours.~~ **I. In advance, a Judge must submit and receive Agency approval, in WebTA or successor program, for requests to earn Credit Hours.** ~~The Parties acknowledge that given the Employer's current workload, appropriate work is typically available for credit hours work. In the event a HOCALJ or Acting HOCALJ makes a reasonable and good faith determination that work appropriate for credit hours is not available for Judges assigned to the hearing office, t~~**The** ~~HOCALJ or Acting HOCALJ~~ **Agency** will ~~so~~ notify the ~~hearing office~~ Judges ~~in writing~~ regarding the basis for~~,~~	L.299-308	~~Judges will provide annual written notice to the HOCALJ or Acting HOCALJ of the Judge's request to work credit hours. The Parties acknowledge that given the Employer's current workload, appropriate work is typically available for credit hours work. In the event a HOCALJ or Acting HOCALJ makes a reasonable and good faith determination that work appropriate for credit hours is not available for Judges assigned to the hearing office, t~~**The** ~~HOCALJ or Acting HOCALJ~~ **Agency** ~~will so notify the hearing office Judges in writing regarding the basis for, and duration of that determination~~.	The Agency proposes that Judges must submit credit hour requests in advance and the Agency will provide reasons for denials of any of these requests. The Union rejects the Agency's proposal to require advance approval to work credit hours.

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		~~and duration of that determination~~ **any denial to earn Credit Hours**.			

ARTICLE 15 Telework					
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 04/11/19- Union submitted Union 2 • 06/05/19- Union submitted Telework Package Deal • 06/17/19-06/20/19- Concentrated Mediation • 06/20/19 – Agency submitted Management FINAL/LBO • 06/20/19 – Union submitted Union FINAL/LBO					
	Agency Proposed Language			**Union Proposed Language**	**Explanation**
40	L.7-9	**The Agency may permit eligible IFPTE bargaining unit Judges to perform Agency assigned work at a management-approved alternate duty station. The Agency reserves the right to suspend or terminate Telework without notice.**		**The Agency may permit eligible IFPTE bargaining unit Judges to perform Agency assigned work at a management-approved alternate duty station(s). The Agency reserves the right to suspend or terminate Telework without notice consistent with this Article.**	The Union proposes the possibility of more than one alternate duty station. The Agency rejects this proposal.
41	L.13-15	**Alternate Duty Station (ADS) – a management-approved work site that is geographically convenient (within two hours of the ODS) to the Judge's official duty station, as reflected in the Telework Program Agreement.**		**Alternate Duty Station (ADS) – a management-approved work site that is a location other than the Judge's official duty station such as a Judge's domicile or other approved residence, as reflected in the Telework Program Agreement.**	The Agency proposes that an ADS location remain two hours from the Judge's ODS, while the Union proposes that the ADS can be at a Judge's domicile or other approved residence.
42	L.29	**Unscheduled Telework – approved telework on a non-scheduled day at an ADS.**		**Unscheduled Telework – telework on a non-scheduled day at an ADS.**	The Union proposal defines unscheduled telework on a non-scheduled day at an ADS. The Agency rejects this proposal.
43	L.41-42	**The Agency will determine whether a Judge is eligible to telework and the number of days eligible Judges are permitted to telework.**		**Pursuant to applicable law, the Agency has determined the position of ALJ is eligible to telework.**	The Agency proposal bases telework eligibility on their discretion and is a request for a statutory waiver. The Union proposes to base telework eligibility on applicable law.
44		*No proposed language*		**A Judge will not be prohibited from participating in telework based on work performance. Pursuant to 5**	The Union proposes language that asserts the legal prohibition of linking Judges' telework to performance, or from rating Judges,

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				CFR 930.206, the Agency are prohibited from rating the performance of Judges, as well as provide bonuses and other incentives for work performance. Teleworking and non-teleworking Judges will be treated the same for purposes of work requirements, evaluating what constitutes diminished work productivity, and any other acts involving managerial discretion.	or providing them with incentives for performance. Further, the Union proposal states that teleworking and non-teleworking Judges must be treated the same, consistent with law. The Agency rejects this proposal.
45	L.77-91	**Not have been issued a reprimand or been subject to an initial decision from the MSPB finding "good cause" for discipline in the prior eighteen months.** **Not have failed to comply with a workload or policy compliance directive in the prior six months.** **Not currently be on sick leave restriction or have been counseled for sick leave abuse or placed on sick leave restriction in the prior twelve months.** **Not require close supervision.**		*No proposed language*	The Agency proposes language that more greatly limits telework eligibility than the current CBA. The Agency proposed to make Judges ineligible should they have received disciplinary actions within the last 18 months, having moved from the current 12-month standard. Further, the Agency proposed to make noncompliance with a workplace or policy compliance directive in the last six months a disqualification for telework. The Agency further proposes to deny telework for Judges who have received a counseling for sick leave, or a sick leave restriction letter. While undefined, the Agency proposes to deny telework if a Judge requires "close supervision." The Union rejects these proposed changes.
46		*No proposed language*		**The Judge has not demonstrated, in the preceding telework cycle, that engaging in telework resulted in diminished work productivity;**	The Union proposes limitations to telework eligibility for diminished work productivity,., which is consistent with the Telework Enhancement Act of 2010. The Agency rejects this proposal.
47		*No proposed language*		**The Agency, based upon operational needs, does not have a credible need to**	The Union proposes a credible need standard to change, reduce, suspend or deny telework requests.

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				change, reduce, suspend, or deny the telework request.	The Agency rejects this proposal.
48	L.101-109	**The Agency will normally counsel a Judge ~~about specific problems, including a diminishment in performance,~~ before terminating ~~removing~~ a Judge from Telework, except in the case of serious violations. When the Agency terminates a Judge's participation in Telework, the Judge will be notified of the reason for termination and the effective date. ~~of the termination.~~ The Agency will consider individual circumstances when determining the effective date of termination from Telework. A Judge terminated ~~removed~~ from Telework may reapply for Telework at the first application cycle following a one-year termination period, unless otherwise prohibited by law, rule, or government-wide regulation.**		**The Agency will ~~normally~~ counsel a Judge about specific problems~~, including a diminishment in performance,~~ before terminating ~~removing~~ a Judge from Telework, except in the case of serious violations. When the Agency terminates a Judge's participation in Telework, the Judge will be notified of the reason for termination and the effective date. ~~of the termination.~~ The Agency must consider any circumstances beyond the judge's control, such as a decrease in agency resources including staffing, as well as exigent and/or extenuating circumstances, including but not limited to use FMLA, sick, annual or military leave, when determining whether or not to remove a Judge A Judge removed from Telework may reapply for Telework at the first application cycle, or if warranted based on the seriousness of any violations of this Article, after serving a suspension period of no more than one year, unless otherwise prohibited by law, rule, or government-wide regulation.**	The Agency proposes to change the current CBA language that requires that the Agency speak with the Judge prior to removing him or her from telework. The Union rejects this proposal. The Union proposed that the Agency consider circumstances beyond the Judge's control, including use of FMLA, annual or military leave when deciding whether to remove a Judge from Telework. The Agency rejects the proposal. The Union proposes that the Judge may reapply after serving a suspension of no more than one year. The Agency rejects this proposal.
49	L.111-113	**The Agency retains sole discretion to change, reduce, suspend, or eliminate approved telework days of any Judge, office, or agency-wide due to operational needs.**		*No proposed language*	The Agency proposes a statutory waiver to retain sole discretion over any changes to telework due to operational needs which are not defined. The Union rejects this proposal as it is inconsistent with the Telework Enhancement Act of 2010.
50		*No proposed language*		**Judges will be allowed to telework on non-hearing days unless doing so results in**	The Union's proposal seeks to permit telework for a Judge on any day the Judge does not have

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				reduced productivity, the operational needs of the agency materially change requiring greater attendance on non-hearing days or the Agency directs attendance for mandatory trainings and/or meetings.	hearings or mandatory trainings, unless doing so reduces productivity, operational needs materially change, or the Agency directs attendance for training and/or meetings. The Agency rejects this proposal.
51	L.147-148	**Judges may only split a telework day between the ADS and the ODS at the discretion of the Agency.**		**Judges will schedule hearing days prior to selecting telework days; however, Judges may only split a telework day between the ADS and the ODS with the permission of the Hearing Office Chief Administrative Law Judge**	The Union proposal is that a Judge must select hearing days prior to scheduling telework days. The Parties dispute whether the Agency in general has discretion to approve partial telework and in office days, or whether this discretion should reside with the HOCALJ, a local management official.
52	L.172-175	**All laws, government-wide rules, government-wide regulations, and Agency policies governing Judge conduct at the ODS continue to apply at the ADS including, but not limited to, the Privacy Act and the Standards of Ethical Conduct for Employees ~~Judges~~ in the Executive Branch.**		**All laws, government-wide rules, government-wide regulations, and Agency policies governing Judge conduct at the ODS continue to apply at the ADS including, but not limited to, the Privacy Act and the Standards of Ethical Conduct for Judges in the Executive Branch.**	There is a one word difference in the two proposals – "Employees" and "Judges." The Union in error entitled the document.
53	L.206-204	**The Agency may require that Judges provide electronic notification to their supervisor at the beginning and/or end of their workday.**		**The Agency requires that Judges provide electronic notification to their supervisor at the beginning and/or end of their workday through WebTA or its successor program.**	The Agency seeks the ability to request electronic notification of when Judges are teleworking, in addition to the submission of a telework agreement and the requirement to document entry and exit time through WebTA. The Union proposes that the electronic notification continue to be done via WebTA only.
54	L.230-238	**A Judge will promptly inform management of any disruption at the ADS (e.g., equipment failure, power outages, telecommunication difficulties), that impact the Judge's ability to perform Agency assigned work. In these situations, the Agency may require the Judge to report to the ODS or the Judge may request leave. If the disruption is through no fault of the Agency, the Judge will**		**A Judge will promptly inform management of any disruption at the ADS (e.g., equipment failure, power outages, telecommunication difficulties), that impact the Judge's ability to perform Agency assigned work. In these situations, the Agency may require the Judge to report to the ODS or the Judge may request leave. If the disruption is through no fault of the Agency, the Judge**	In the event that conditions cause the office to close and the ADS to be too unsafe to telework, a Judge may be granted leave. In dispute is whether the leave will be granted in accordance with Article 18 (also a disputed Article) of this Agreement or whether the leave will be granted in accordance with government policies and any agreements between the Parties.

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		be in a non-duty status from the time of the disruption to the end of the scheduled workday or until the Judge reports to the ODS. The Judge may request leave for the non-duty period. However, if the ODS is closed and the condition creating the disruption makes the ADS unsafe, the Judge may be granted leave in accordance with Article 18.		**will be in a non-duty status from the time of the disruption to the end of the scheduled workday or until the Judge reports to the ODS. The Judge may request leave for the non-duty period. However, if the ODS is closed and the condition creating the disruption makes the ADS unsafe, the Judge may be granted leave in accordance with government wide policy and any negotiated agreement between the parties.**	
55	L.244-245	**The Agency may require that Judges use instant messaging, video, or similar technology working at the ADS.**		*No proposed language*	The Agency proposed mandatory usage of technology to monitor Judges who telework. The Union rejects this proposal.
56	L.247-249	**Judges should ensure that the Agency's instant message program, or similar technology, accurately reflects their work status. Judges must timely respond to instant messages from the Agency.**		*No proposed language*	The Agency proposed mandatory usage of technology to monitor Judges who telework. The Union rejects this proposal.
57	L.251-252	**When working at the ADS, a Judge must be accessible by telephone during working hours, exclusive of the lunch period and break periods.**		**When working at the ADS, a Judge must ensure they are accessible to their hearing office chief administrative law judge via telephone.**	The Parties agree that Judges should be accessible by telephone while teleworking; however, the Union seeks to limit any telephone availability to only the HOCALJ.
58	L.256-257	**While at the ADS, a Judge is responsible for retrieving, and responding in a timely manner, to voice mail left at both the ADS and the ODS.**		**While at the ADS, a Judge is responsible for retrieving, and responding in a timely manner, to voice mail left at both the ADS and the ODS if their hearing office enables access to retrieve work voicemail remotely.**	The Parties agree that Judges are responsible for retrieving and returning voicemails timely. The Union seeks to limit this requirement to only if the office enables a Judge access to voicemails remotely.
59	L.263-264	**A Judge may be called back to the ODS. A Judge required to report to their ODS as soon as possible but no more than two hours after notification.**		**A Judge may be called back to the ODS. A Judge required to report to their ODS as soon as possible but no more than two hours after notification, or the Judge must request leave.**	The Union proposes language that ensure a Judge has the option to request leave should he or she be called back to the office while teleworking. The Agency rejects this proposal.
60	L.270-273	**If the Agency temporarily suspends telework or calls a Judge back to the ODS, the Judge is not guaranteed**		**If the Agency temporarily suspends telework or calls a Judge back to the ODS, the Judge is not guaranteed**	The Agency proposes to change the requirement for the Judge to seek approval to change his or her

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		"replacement time" or an "in lieu of" telework day. However, a Judge's telework day may be temporarily switched to another day with prior Agency approval.		**"replacement time" or an "in lieu of" telework day. However, a Judge's telework day may be temporarily switched to another day with the Hearing Office Administrative Law Judge's approval.**	telework from the HOCALJ to the "Agency" in general. The Union proposes language that maintains the current Article 15 requirements of contacting the HOCALJ or Acting HOCALJ specifically.
61	L.387-388	**I understand I must perform telework at my approved ADS on a day when the ODS closes due to a hazardous weather or safety event in accordance with agency policy.**		**I understand I must perform telework at my approved ADS on a day when the ODS closes due to a hazardous weather or safety event in accordance with government-wide policy.**	While the Parties agree that a Judge must telework in the event the office closes due to hazardous weather, the Parties dispute whether this is in accordance with Agency policy or government-wide policy.
62	L.440-442	**The Agency may require a written daily account of the work performed at my ADS. The format and required content of the written account will be determined by the Agency.**		*No proposed language*	The Agency proposes that it may require written accounts of Judge activities performed while teleworking. Because the proposal is contrary to the Telework Enhancement Act of 2010 and treats teleworking and non-teleworking judges differently, the Union rejects this proposal to waive a statutory right.
63	L.444-445	**I understand that the Agency may require employees who telework to share workspace (e.g., desk, cubicle, office) at the ODS.**		*No proposed language*	The Agency seeks to require all teleworking Judges to agree to possible the forfeiture of their workspace in order to be permitted to telework, thus is seeking a statutory waiver. Because the proposal violates the Telework Enhancement Act of 2010 by treating teleworking judges differently (requiring a possible forfeiture of workspace) the Union rejects this proposal.

ARTICLE 18 Leave
Bargaining History • 02/22/19 – Agency submitted Management 1 • 02/22/19 – Union submitted Union 1 • 04/12/19 – Agency submitted Management 2 • 05/07/19- Agency submitted package deal (A.2, A.3, A.6, A.8, A.13, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29) • 05/09/19- Union submitted Union 2 • 06/03/19- Agency submitted package deal 1 (A.2, A.3, A.6, A.8, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29) • 06/04/19- Agency submitted package deal 2 (A.3, A.6, A.8, A.17, A.18, A.21, A.22, A.23, A.27) • 06/05/19- Union submitted package deal (A.10, A.11, A.12, A.18, A.20, A.22, A.30, A.31)

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- 06/05/19- Agency submitted package deal 4 (A.8, A.10, A.11, A.18, A.22)
- 06/06/19- Union submitted package deal (A.18, A.20, A.22)
- 06/17/19-06/20/19- Concentrated Mediation
- 06/17/19- Agency submitted package deal 7 (A.18, A.22)
- 06/19/19- Union submitted Union 3
- 06/19/19- Union submitted FINAL/LBO
- 06/20/19 – Agency submitted Management FINAL/LBO

	Agency Proposed Language		Union Proposed Language		Explanation
64	L.49-53	**A j**~~J~~udge~~s~~ will ~~**must**~~ submit **a request** for approval ~~a completed form SSA-71, or electronic equivalent~~ **in WebTA** ~~**or successor program**~~ in advance of all anticipated leave to permit the orderly scheduling of leave~~; to avoid leave forfeitures which might otherwise result; and to protect the Judges' right to file for restoration of leave forfeited due to illness or injury or an exigency of public business if all other conditions are met~~.	L.33-38	**A j**~~J~~udge~~s~~ will ~~**must**~~ submit **a request** for approval ~~a completed form SSA-71, or electronic equivalent~~ **in WebTA or successor program for which procedures and appropriate arrangements would be negotiated** in advance of all anticipated leave to permit the orderly scheduling of leave~~; to avoid leave forfeitures which might otherwise result; and to protect the Judges' right to file for restoration of leave forfeited due to illness or injury or an exigency of public business if all other conditions are met~~.	The Union proposes language that requires negotiation changes made to the WebTA for which procedures and appropriate arrangements would be statutorily required. The Agency rejects this proposal and proposes the Union waive its statutory rights to negotiate procedures and appropriate arrangements.
65	L.78-82	If ~~the~~ **a** Judge ~~is not in the office~~ **does not have access to WebTA** ~~**or successor program**~~ and the use of ~~annual or sick~~ leave cannot be anticipated, the request for leave approval shall be ~~called in~~ **submitted** ~~within one (1) hour after the start of the Judge's normal tour of duty or core time when flextime is in effect, or as soon as possible thereafter~~**:**	L.54-58	If ~~the~~ **a** Judge ~~is not in the office~~ **does not have access to WebTA or successor program** and the use of ~~annual or sick~~ leave cannot be anticipated, the request for leave approval shall be ~~called in~~ **submitted (via telephone or email)** ~~within one (1) hour after the start of the Judge's normal tour of duty or core time when flextime is in effect, or as soon as possible thereafter~~**:**	The Union proposes clarification that requests for leave must be made by telephone or email. The Agency rejects this proposal.
66	L.92-103	**To submit a request for unanticipated leave, a Judge must make c**~~C~~ontact ~~will be made~~ with the HOCALJ or **A**~~a~~cting HOCALJ. In the event that neither is available, a Judge ~~may utilize voice mail, where it exists, to notify the HOCALJ or acting HOCALJ of the need for leave~~ **must make contact with another hearing office management official such as the Hearing Office Director (HOD) or**	L.65-72	**To submit a request for unanticipated leave, a Judge must make c**~~C~~ontact ~~will be made~~ with the HOCALJ or **A**~~a~~cting HOCALJ. In the event that neither is available, a Judge may utilize voice mail, where it exists, **and/or email** to notify the HOCALJ or acting HOCALJ of the need for leave. ~~Notification by automated answer/voice mail does not equate to leave approval.~~ In the event the Judge is unable to	The Agency proposes to change the current CBA language so that a Judge seeking unanticipated leave must now speak with a management official and not merely leave a voicemail. The Union proposes to maintain current language so that requests for leave can be made by voicemail or email with their HOCALJ or Acting HOCALJ.

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		Group Supervisor (GS). ~~Notification by automated answer/voice mail does not equate to leave approval.~~ In the event the Judge is unable to make **contact** ~~the call~~, any responsible person can make **contact** ~~the call~~ for the Judge. If the absence extends beyond the anticipated period, a Judge will inform the HOCALJ or **A**~~a~~cting HOCALJ of the situation promptly. The Judge will submit a completed ~~form SSA-71, or electronic equivalent~~ **request in WebTA ~~or successor program~~**, promptly upon ~~his or her~~ **their** return to the Hearing Office.		make the call **or email**, any responsible person can make the call for the Judge. If the absence extends beyond the anticipated period, a Judge will inform the HOCALJ or **A**~~a~~cting HOCALJ of the situation promptly. The Judge will submit a completed ~~form SSA-71, or electronic equivalent~~ **request in WebTA or successor program**, promptly upon ~~his or her~~ **their** return to the Hearing Office.	
67	L. 105-106	If the Judge's leave status has not been clarified by the close of business, the absence ~~may~~ **will** be ~~charged~~ **recorded** ~~to~~ ~~a~~**as** absence without leave ~~category~~.	L.73-74; 86-89	If the Judge's leave status has not been clarified by the close of business, the absence ~~may~~ be charged to an absence without leave category. Consistent with Section 1, Part C. of this Article, **Judges will be notified to submit requests for extended annual leave of one calendar week or more** in conjunction with their hearing calendars. **Such requests must be submitted in WebTA or successor program to the appropriate leave approving official**.	The Agency proposes that unclarified leave statuses will be recorded as absence without leave; whereas the Union proposes unclarified leave may be charged as absence without leave. The Union proposed language for judges to turn in a request for a week or more of leave with their hearing calendar.
68	L.121-127	**During the months of February and August of each year, Judges will be notified to submit requests for extended annual leave of one calendar week or more and/or requests for days immediately preceding and following federal holidays for the six-month periods of April through September and October through March, respectively. Such requests must be submitted in WebTA ~~or successor program~~ to the appropriate leave approving official by the last day of February and August, respectively.**		*No proposed language*	The Agency proposes new language, creating a procedure to submit requests for annual leave for one week or more to be submitted during the months of February and August only. The Union rejects this proposal.

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69		*No proposed language*	L. 98-106	**Consistent with law and appropriate regulations, leave is an earned right subject to management's right to approve when leave is scheduled. A Judge who takes earned leave (annual or sick) will not be penalized for taking leave by being required to schedule additional cases before or after leave is taken in any calendar year to make up for cases not scheduled while on leave. As such monthly, biannual and annual cases scheduling metrics will be adjusted to account for leave taken. If mission critical operational needs necessitate that a Judge make up cases not scheduled while on earned leave, then a Judge will be compensated pursuant to 5 USC 5541(2), or at management's discretion compensatory time in lieu will be provided.**	The Union proposes language that would prohibit the Agency from requiring judges to schedule additional cases before or after they take leave to make up for cases not scheduled while on leave. The Agency rejects this proposal. The Union proposes language that acknowledges Judges are eligible for overtime pay or compensatory pay, at the Agency's discretion consistent with law. The Agency rejects this proposal.
70	L.459-465	A Judge may be granted advanced annual leave ~~up to the amount that can be earned by the end of the appointment or the leave year, whichever is sooner~~ **for the lesser of ~~forty~~ eighty hours or the amount of annual leave a Judge would accrue the remainder of the leave year ~~(i.e., maximum of forty hours in the leave year). This provision does not apply to~~ a A Judge who is currently on a leave restriction or who has~~ve~~ been disciplined for leave related offenses in the past two years is not eligible for advanced annual leave.**	L.346-348	A Judge may be granted advanced annual leave ~~up to the amount that can be earned by the end of the appointment or the leave year, whichever is sooner~~ **pursuant to applicable law and regulations.**	The Agency proposes a statutory waiver that placing limits on the eligibility for and amount of annual leave which can be advanced to a Judge that is less than allowable pursuant to applicable law and regulation. The Union proposes that the amount that may be granted be based on the statutory limits and rejects this proposed statutory waiver.
71	L.497-502	Each request for advanced sick leave shall be considered by the ~~Employer~~ **Agency** on its individual merits and in accordance with **law, regulations, and Agency policy** ~~the criteria described in paragraphs A and B of this subsection~~. **The reasons for a~~A~~**ny denial of ~~the~~ **a** Judge's	L.367-371	Each request for advanced sick leave shall be considered by the ~~Employer~~ **Agency** on its individual merits and in accordance with the criteria described in paragraphs A and B of this subsection. **The reasons for a~~A~~**ny denial of ~~the~~ **a** Judge's request for advanced sick leave shall be ~~in writing~~	The Agency proposes language requiring consideration of advanced sick leave based not only on law and regulations but also on Agency policy. The Union proposes language that requires consideration of advanced sick leave based on applicable laws and regulations.

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		request for advanced sick leave shall be ~~in writing~~ **recorded in WebTA ~~or successor program~~** ~~with the reason set forth and shall be provided to the Judge at the time of the denial~~.		**recorded in WebTA** ~~with the reason set forth and shall be provided to the Judge at the time of the denial~~.	
72	L.798-803	**Military Leave will be approved in accordance with law and appropriate regulations. The OPE Website will provide the latest information regarding Military Leave. In addition, the OPE Website will provide an electronic link to the Military Leave information on the OPM Website. A Judge who takes military leave will not be penalized for taking military leave by being required to schedule additional cases before or after military leave is taken in any calendar year to make up for cases not scheduled while on military leave.**	L.602-614	**Military Leave will be approved in accordance with law and appropriate regulations. The OPE Website will provide the latest information regarding Military Leave. In addition, the OPE Website will provide an electronic link to the Military Leave information on the OPM Website. A Judge who takes military leave will not be penalized for taking military leave by being required to schedule additional cases before or after military leave is taken in any calendar year to make up for cases not scheduled while on military leave. As such monthly, biannual and annual cases scheduling metrics will be adjusted to account for military leave taken. If mission critical operational needs necessitate that a Judge make up cases not scheduled while on military leave, then a Judge will be compensated pursuant to 5 USC 5541(2), or at management's discretion compensatory time in lieu will be provided.**	The Union proposes language to ensure military members will not be penalized for taking military leave by requiring monthly, biannual, and annual case scheduling metrics be adjusted to account for military leave taken. The Union further proposed language ensuring adherence with 5 USC 5541(2) related to premium pay. The Agency rejects this language.

ARTICLE 20
Reassignments and Hardships

Bargaining History
- 02/22/19 – Agency submitted Management 1
- 02/22/19 – Union submitted Union 1
- 03/19/19 – Agency submitted Management 2
- 04/12/19- Union submitted Union 2
- 06/05/19- Union submitted package deal (A.10, A.11, A.12, A.18, A.20, A.22, A.30, A.31)
- 06/06/19- Union submitted package deal (A.18, A.20, A.22)
- 06/17/19-06/20/19- Concentrated Mediation
- 06/17/19- Agency submitted package deal 9 (A.7, A.13, A.20, A.25)

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- 06/18/19- Union presented package deal (A.12, A.20, A.22)
- 06/19/19- Union submitted package deal 2 (A.7, A.20, A.22, A.25, A.30, A.31
- 06/20/19- Union submitted package deal 1 (A.2, A.12, A.20, A.29)
- 06/20/19 – Agency submitted Management FINAL/LBO
- 06/21/19- Union submitted FINAL/LBO

	Agency Proposed Language		Union Proposed Language		Explanation
73	L.26-28	The ~~Employer~~ **Agency** will determine when there is an open **Judge** position in a hearing office that will be filled by permanent reassignment ~~**transfer**~~ or **new appointment** ~~assignment with a Judge~~.	L.21-23	The ~~Employer~~ **Agency** will determine when there is an open **Judge** position in a hearing office that will be filled by permanent reassignment ~~**transfer**~~ or **if there is no eligible Judge available who is interested, new appointment** ~~assignment with a Judge~~.	The Agency proposes to eliminate the current language that requires the Agency to solicit interest of current Judges for reassignments prior to filling vacancies with new appointments. The Union rejects this proposal.
74	L.34-36	The reassignment ~~**Transfer**~~ **requests** ~~register and its "affirmed list"~~ as described below ~~shall~~ **may** be used to fill ~~all~~ non-management Judge vacancies~~, except as otherwise provided for in Section 1~~.	L.28-30	The reassignment ~~**Transfer**~~ **requests** ~~register and its "affirmed list"~~ as described below shall be used to fill ~~all~~ non-management Judge vacancies~~, except as otherwise provided for in Section 1~~.	The Agency proposes to eliminate the current language that requires the Agency to fill Judge vacancies with reassignments only through the reassignment process. The Union rejects the proposal.
75	L.53-61	A Judge who **has been issued a reprimand or been subject to an initial decision from the MSPB finding "good cause" for** ~~**is under investigation for actions that may lead to discipline, has pending discipline, or who has been subject to**~~ **discipline within the prior eighteen months** ~~has received a letter of reprimand~~ ~~that has been placed in an SF-7B employee record extension file or who has been disciplined pursuant to 5 C.F.R. §930.214~~ ~~shall have his or her name removed from the request register after final adjudication of the issue and~~ shall not be eligible to ~~have his or her name returned~~ **apply for a reassignment** ~~**transfer**~~ ~~to the register for requested reassignment until twelve (12) months have passed from the date of final adjudication~~.	L.43-50	A Judge who has received a letter of reprimand **that has been adjudicated or did not submit a timely appeal, or been subject to an initial decision from the MSPB finding "good cause" for discipline within the prior twelve months** ~~that has been placed in an SF-7B employee record extension file or who has been disciplined pursuant to 5 C.F.R. §930.214~~ ~~shall have his or her name removed from the request register after final adjudication of the issue and~~ shall not be eligible to ~~have his or her name returned~~ **apply for a reassignment transfer** to the register for requested reassignment until twelve (12) months have passed from the date of final adjudication.	The Union proposes that a Judge is eligible for reassignment if a proposed reprimand is still pending. The Agency rejects this proposal.
76	L.66-68	**A Judge must not have failed to comply with a workload or policy**		*No proposed language*	The Agency proposes to restrict reassignment for a Judge who has failed to comply with a workload or

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		compliance directive in the prior six months.			compliance directive. The Union rejects the proposal.
77	L.73-74	**A Judge must not currently be on sick leave restriction or have been counseled for sick leave abuse or placed on sick leave restriction in the prior twelve months.**	L.51	**A Judge must not have been on sick leave restriction in the prior twelve months.**	While the Parties agree that a Judge on sick leave restriction for the prior twelve months is ineligible for reassignment, the Agency proposal to further restrict reassignment for a Judge who has been counseled for sick leave abuse is rejected by the Union.
78	L.93-95	**When the Agency determines there is an open Judge position in a hearing office, the Agency may solicit ~~transfer~~ reassignment requests from all Judges for the open position.**	L.66-68	**When the Agency determines there is an open Judge position in a hearing office, the Agency shall solicit ~~transfer~~ reassignment requests from all Judges for the open position.**	The Agency proposes to eliminate the current language that requires the Agency to fill Judge vacancies with reassignments only through the reassignment process. The Union rejects this proposal.
79	L.108-111	**If the Agency determines a vacancy is to be filled by reassignment, only Judges who timely respond to the solicitation and meet the eligibility requirements of Section 3 will be considered.**	L.78-80	**When the Agency determines a vacancy is to be filled, only Judges who timely respond to the solicitation and meet the eligibility requirements of Section 3 will be considered.**	The Agency proposes to eliminate current language that requires the Agency to fill Judge vacancies with reassignments only through the reassignment process. The Union rejects this proposal.
80		*No proposed language*	L.166-168	**The AALJ President will be provided a quarterly list of all compassion assignment requests and the action taken if any.**	The Union proposal requires the Agency to provide regular reports of all compassion assignment requests. The Agency rejects this proposal.
81	L.242	**The total of all compassion assignments may not exceed one year.**	L.190	**The total of all compassion assignments for the same event may not exceed one year.**	The Agency proposal limits compassion assignments to a total of one year; whereas, the Union proposal limits compassion assignments to one year for the same event.

ARTICLE 29
Facilities and Services

Bargaining History
- 02/22/19 – Agency submitted Management 1
- 02/22/19 – Union submitted Union 1
- 04/15/19- Union submitted Union 2
- 05/07/19- Agency submitted package deal (A.2, A.3, A.6, A.8, A.13, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29)
- 06/03/19- Agency submitted package deal 1 (A.2, A.3, A.6, A.8, A.17, A.18, A.21, A.22, A.23, A.25, A.27, A.29)
- 06/17/19-06/20/19- Concentrated Mediation
- 06/18/19- Agency submitted package deal 11 (A.2, A.12, A.22, A.29)
- 06/20/19- Union submitted package deal 1 (A.2, A.12, A.20, A.29)
- 06/20/19 – Agency submitted Management FINAL/LBO
- 07/03/19- Union submitted FINAL/LBO

	Agency Proposed Language	**Union Proposed Language**	**Explanation**

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82	L.52-54	**The Agency will provide the Union with advance information related to any office opening, consolidation, relocation, expansion, or renovation. These actions will be accomplished in accordance with applicable Agency policies.**	L.47-49	**When the Agency opens, moves, relocates, expands, consolidates or renovates an office, the Agency shall provide notice and opportunity to bargain pursuant to 5 U.S.C. § 7101, et. seq.**	The Agency proposal a statutory wavier of the Union's right to negotiate office openings, consolidation, or renovation. The Union rejects this proposal.
83	L.124	~~All ODAR space plans must be consistent with applicable local and state fire codes.~~	L.97-98	All ~~ODAR~~ **OHO** space plans must be consistent with applicable local and state fire codes.	The Agency seeks to eliminate language regarding local and state fire codes, while the Union proposes the language remains.
84	L.126-128	~~The ODAR has determined that intrusion detection (security) systems and duress alarms will be installed and monitored consistent with the provisions of Article 29 and its Sidebar applicable to ODAR Field Offices.~~	L.99-101	The ~~ODAR~~ **OHO** has determined that intrusion detection (security) systems and duress alarms will be installed and monitored ~~consistent with the provisions of Article 29 and its Sidebar applicable to ODAR Field Offices.~~	The Agency proposes to remove language committing to the installation of security systems and duress alarms. The Union rejects this proposal.
85	L.130-132	~~Each Judge in a hearing office and a satellite office as defined in Section 1 shall be provided an individual private office consistent with the provisions of Article 29 and its Sidebar applicable to ODAR Field Offices.~~	L.102-111	Each Judge in a hearing office and a satellite office as defined in Section 1 shall be provided an individual private office **that takes in account their position/rank as Inferior Officers and Administrative Law Judges within the Agency's hierarchal structure for office space allocation. As such, Judges offices should be smaller than those of officers who are Presidentially Appointed with Senate confirmation (PAS) and larger than those of all other employees within the agency. The 1998 Space Allocation Standards will be adhered to until such time they are renegotiated by the parties.** ~~consistent with the provisions of Article 29 and its Sidebar applicable to ODAR Field Offices.~~	. The Agency proposes to reduce Judges' offices from 200sf to 120sf. The Union rejects this change and proposes to maintain the status quo. Further, the Union proposes language clarifying that pursuant to Agency policy, individuals will be allocated office space consistent with their rank/hierarchical position. As such, since judges are inferior officers, they should be allocated officers smaller than principal officers but larger than those of employees. The Agency rejects this proposal.
86	L.184-186	**The AALJ will be notified of the relocation/renovation dates when finalized. The Agency will contact the AALJ's designee to discuss any issues that may come up during the relocation process. Judges will be**		*No proposed language*	The Agency proposes language that the Union waive its right to bargain all space actions. The Union rejects this proposal.

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		advised in advance of any renovations.			
87	L.191-196	If a Judge's personal materials and/or files will be moved due to a hearing office or satellite office opening, move, relocation, expansion, or renovation, the Judge may receive a reasonable amount of duty time, ~~up to two work days total,~~ away from assigned duties, to pack and unpack those items. Packing, unpacking, setting up, and moving of any furniture/equipment and personal items will be done in a way that does not jeopardize the health and safety of Judges.	L.141-146	If a Judge's personal materials and/or files will be moved due to a hearing office or satellite office opening, move, relocation, expansion, or renovation, the Judge may receive a reasonable amount of duty time, up to two work days total, away from assigned duties, to pack and unpack those items. Packing, unpacking, setting up, and moving of any furniture/equipment and personal items will be done in a way that does not jeopardize the health and safety of Judges.	The Agency proposes to change current language allowing a judge up to two work days of duty time to move offices, to an unspecified amount of time. The Union proposes to keep the current language.
88	L.198-200	The ~~Employer~~ **Agency** is not responsible for moving a Judge's personal furniture or decorative items or the loss or damage resulting from moving the furniture or decorative items.	L.147-151	The ~~Employer~~ **Agency** is not responsible for moving a Judge's personal furniture or decorative items or the loss or damage resulting from moving the furniture or decorative items, **except, the Agency will provide assistance in moving personal items for judges with disabilities or other physical health conditions, which preclude a judge from personally moving items**.	The Union proposes the Agency provide assistance in moving personal belongings of Judges with physical disabilities. The Agency rejects the proposal.
89	L.223-227	~~Judges will be provided one executive-style desk of unitized wood construction, as specified in the AIMS along with one traditional high-backed "ALJ" chair, or suitable alternative from mandatory Federal supply sources. A computer table and an ergonomic chair will be provided. A table, bookcase, locking file cabinet, U.S. flag display, and two visitors chairs will also be provided.~~	L.168-172	Judges will be provided one executive-style desk of unitized wood construction, as specified in the AIMS along with one traditional high-backed ~~"ALJ"~~ **leather-style** chair, or suitable alternative from mandatory Federal supply sources. A computer table and an ergonomic chair will be provided. A table, bookcase, locking file cabinet, U.S. flag display, and two visitors chairs will also be provided.	The Agency proposes to no longer provide American flags in the offices of Judges. The Union rejects this proposal.
90	L.232-235	With the concurrence of ~~local management~~ **the Agency**, Judges may bring in a personally-owned ~~desk and/or~~ chair to be used in their offices. Personal decorative objects and items will	L.175-179	With the concurrence of ~~local management~~ **the HOCALJ**, Judges may bring in a personally-owned ~~desk and/or~~ chair to be used in their offices. Personal decorative objects and items will	The issue in dispute is whether personally-owned chairs should be approved by the Agency or specifically the HOCALJ.

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		continue to be allowed within existing standards. Use of personal electrical appliances must comply with Government-wide policies and applicable ~~lease~~ **occupancy** agreements.		continue to be allowed within existing standards. Use of personal electrical appliances must comply with Government-wide policies and applicable ~~lease~~ **occupancy** agreements.	
91	L.237-238	Window coverings for **J**~~j~~udge offices will be provided as specified in the ~~lease~~ **occupancy** agreement, subject to any building standard limitations.	L.180-189	Window coverings for **J**~~j~~udge offices will be provided as specified in the ~~lease~~ **occupancy** agreement, subject to any building standard limitations **and each door to the Judge's office will have a push button or similar inside lock mechanism and outside key lock mechanism. The Agency will provide a set of two (2) keys to the Judge and will also have as many keys deemed necessary for local management to gain access to the office. The Agency will exercise customary courtesy and reasonable notification when requesting access to an occupied and locked Judge's office. Safety against terroristic threats and active shooters, or other acts of civil unrest, mandate increased security precautions.**	The Union proposes that the Agency place locks on all Judges' offices so that they and other staff may shelter in place in the event of an active shooter. The Agency rejects this proposal.
92	L.244-250	To ensure the most cost effective scheduling of hearings and use of available resources, ~~management~~ **the Agency** has determined that the hearing rooms in an ~~ODAR~~ **OHO** office are common areas and available for use by any Judge. ~~Absent an agreement by the local Judges acceptable to the Employer, h~~**H**earing room usage will be scheduled in a manner determined by the ~~hearing office management team~~ **Agency** that will maximize the use of these resources. ~~The holding of h~~**H**earings ~~by Judges~~ will preempt the use of a hearing room for office or other employee or group meetings.	L.192-198	To ensure the most cost effective scheduling of hearings and use of available resources, management **the Agency** has determined that the hearing rooms in an ODAR **OHO** office are common areas and available for use by any Judge. Absent an agreement by the local Judges acceptable to the Employer, h**H**earing room usage will be scheduled in a manner determined by the hearing office management team **Agency** that will maximize the use of these resources. The holding of h**H**earings by Judges will preempt the use of a hearing room for office or other employee or group meetings.	The Agency proposes to eliminate the current language that grants local management and its Judges the authority to reach an agreement on hearing room use. The Union rejects this proposal.

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93	L.252-255	~~Management will provide a traditional high-backed "ALJ" chair in each hearing room, subject to budgetary constraints. Judges needing alternative seating will be allowed to move one of their Employer-provided chairs from their private office into a hearing room for their hearings.~~	L.199-202	Management will provide a traditional high-backed ~~"ALJ"~~ **leather style** chair in each hearing room, subject to budgetary constraints. Judges needing alternative seating will be **provided an ergonomic chair.** ~~allowed to move one of their Employer-provided chairs from their private office into a hearing room for their hearings.~~	The Agency proposes to eliminate language requiring it to provide a traditional high back chair in in the hearing room, subject to budgetary constraints. The Agency further proposed to eliminate language stating it will provide alternative seating as need. The Union rejects these proposals. The Union proposes language that requires the Agency to provide an ergonomic chair as needed.
94	L.257-258	~~Railings of 2½ feet, hung down from the top of the bench, will be provided in each hearing room; the gate will have a latch on the inside, toward the Judge~~.	L.203-204	Railings of 2½ feet, hung down from the top of the bench, will be provided in each hearing room; the gate will have a latch on the inside, toward the Judge.	The Agency proposes removal of language requiring a railing, as well as a gate separating the judge from the claimants. The Union rejects this proposal.
95		*No proposed language*	L.205-206	**The panic buttons in the hearing rooms will alert not only Federal Protective Service, but also alert the onsite security personnel.**	The Union proposes language requiring the panic buttons to not only contact Federal Protective Service (that are not onsite), but also contact on site personnel. The Agency rejects this proposal.
96		*No proposed language*	L.207-208	**Management will provide height adjustable tables/benches for Judges' use that enables Judges reasonable space for hearing materials and computer equipment.**	The Union proposes language requiring height adjustable table/benches and reasonable space for hearing material and computer equipment. The Agency rejects these proposals.
97	L.262-268	**To the extent possible,** ~~The~~ current parking situations for **Judges** ~~ALJs in the approximately one hundred sixty-two (162) hearing offices and seven (7) satellite offices~~ shall remain in place. However, when an office lease expires, an office expands its current space, or an office is relocated**,** changes in the distribution of free parking for **Judges** ~~ALJs~~ may be made by the ~~Employer~~ **Agency** consistent with Government-wide regulations ~~including 41 C.F.R. §102-74.305, concerning the criteria for assignment of parking spaces, and OM Memorandum dated June 7, 2000~~.	L.210-215	~~The~~ current parking situations for **Judges** ~~ALJs in the approximately one hundred sixty-two (162) hearing offices and seven (7) satellite offices~~ shall remain in place. However, when an office lease expires, an office expands its current space, or an office is relocated**,** changes in the distribution of free parking for **Judges** ~~ALJs~~ may be made by the ~~Employer~~ **Agency** consistent with Government-wide regulations including 41 C.F.R. §102-74.305, concerning the criteria for assignment of parking spaces, ~~and OM Memorandum dated June 7, 2000.~~	The Agency proposes to eliminate reference to 41 C.F.R. §102-74.305. The Union rejects this proposal.