

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

U.S. DEPARTMENT OF VETERANS AFFAIRS

And

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES

Case No. 20 FSIP 086

BACKGROUND

This case, filed by the U.S. Department of Veterans Affairs (Agency or VA) on September 19, 2020, concerns ground rules for the reopener of the parties' successor collective bargaining agreement (CBA). The mission of the Agency is to fulfill President Lincoln's promise "To care for him who shall have borne the battle, and for his widow, and his orphan" by serving and honoring the men and women who are America's veterans. There are three main components within the VA: the Veterans Health Administration (VHA), the Veterans Benefit Administration (VBA), and the National Cemetery Administration. The National Association of Government Employees (Union) represents over 16,000 bargaining unit employees in a variety of positions throughout the United States. The parties are governed by a collective bargaining agreement that expired in September 2019. This dispute concerns negotiations over ground rules that will be used to bargain a new contract.

BARGAINING HISTORY

The Agency provided the Union with notice of its intent to reopen negotiations over a new CBA in July 2019. The parties exchanged initial email proposals in January 2020 with an intent to reconvene at a later date to formulate a bargaining schedule. On April 22, 2020, the Agency responded with a revised offer and requested to bargain virtually due to the Covid-19 pandemic. The Union declined the Agency's request and insisted that it had a legal right to insist on face-to-face negotiations but provided the Agency with a revised counter proposal on April 28, 2020.

On May 12, 2020, the Union contacted the Federal Mediation and Conciliation Services (FMCS) for assistance with the logistics of negotiating the Ground Rules. After the parties met with FMCS in September 2020, the Union continued to decline to bargain or further mediate with the Agency. Then on September 19, 2020, the Agency requested the assistance of the Panel.

On November 18, 2020, the Panel ordered the parties to engage in 21 days of concentrated mediation with the assistance of FMCS Commissioner Randall Mayhew. In the Panel's order, the parties were advised that if at the end of the 21 days or when released by Commissioner Mayhew, which ever occurred first, the parties would have 10 days to submit written positions to the Panel on any

remaining articles. The parties began the ordered mediation on November 30th and were able to reach tentative agreement on 10 of the 15 articles in the parties' Ground Rules. On December 11, 2020, Commissioner Mayhew released the parties after determining that they had exhausted mediation efforts. Per the Panel's order, the parties then had the opportunity to submit written submissions on the articles remaining at impasse. Both parties provided timely submissions.

ISSUES

The parties disagree over the proposals for the five remaining Ground Rules articles: Negotiability Before Agency Head Review, 38 U.S.C. § 7422 Determinations Before Agency Head Review, Ratification, Agency Head Review, and MOU Effective Date.¹

I. Negotiability Before Agency Head Review

The parties are in agreement that if provisions of a new CBA are subjected to negotiability appeals with the FLRA, those provisions shall not be severed as the parties continue to bargain.² The Agency proposes to specify that those matters "that fall under FLRA jurisdiction" will not be severed as the parties continue to bargain.³ The Union seeks to not include such a specification and proposes the additional language that any provisions appealed on negotiability are not severed for the purposes of ratification and Agency Head Review.⁴

The Union argues that the Agency's proposal will impermissibly sever proposals whose negotiability has been questioned under 38 U.S.C. § 7422. Listing various decisions from the Panel, the Union argues that the Panel should continue to decline to take jurisdiction over or order proposals that permit severability of negotiability issues.⁵ The Agency argues that reference to the FLRA jurisdiction is appropriate as the negotiations are subject to the FLRA's jurisdiction.

The Panel orders the parties to adopt a modified version of Union Proposal 11.1 and Agency Proposal 11.1. The parties appear to be mostly in agreement under their respective proposals and their proposed additional language are both consistent with the Statute. The proposed language from both parties does not force, or even permit, the severability of provisions based on negotiability issues pursued under the Statute and therefore through the FLRA. The Union's argument that severability of negotiability issues outside of the Statute (i.e., under 38 U.S.C. § 7422) would require it to waive or modify any of its rights under the Statute is unsupported and unpersuasive. Accordingly, the Panel orders the parties to adopt a modified version of their proposals by including both the Agency's desired modifier of the matters "that fall under FLRA jurisdiction" and the Union's desired modifier that the prohibition on severability discussed pertains to "the purposes of ratification and Agency Head Review."

¹ A complete set of the parties' proposals are attached.

² The parties also agree on the timeframe to negotiate matters following the FLRA's determination that a provision is within the duty to bargain. See Agency Proposal 11.2, Union Proposal 11.2

³ See Agency Proposal 11.1

⁴ See Union Proposal 11.1

⁵ Union cites *Dep't. of Defense Ed. Activity*, 20 FSIP 060, slip op. at 10; *Environmental Protection Agency*, 20 FSIP 009 (procedural determination letter of Jan. 22, 2020); *U.S. Patent and Trademark Office*, 20 FSIP 045, (procedural determination letter of June 26, 2020 at 4); *Nat. Labor Relations Bd.*, 20 FSIP 014 (procedural determination letter of Feb. 3, 2020 at 4-5) (Exs.5-8).

II. 38 U.S.C. § 7422 Determinations Before Agency Head Review

The Union's final offer presents, what once was originally included in the second part of the parties' Article 11, in a separate article (Article 12) pertaining specifically to negotiability matters pursuant to 38 U.S.C. § 7422. During negotiations, the parties bargained over the Union's proposed provisions concerning the negotiability of provisions pertaining to Title 38 employees as part of Article 11, with the Agency opposed to including any such provisions. The Union, in its final offer to the Panel, offers those same proposals in a subsequent article, which they labeled Article 12. While the Agency objects to the Union's proposal of a now separate article, the substance of those proposals are nonetheless properly before the Panel.

The Union proposes language that would prevent the severing of any provisions subject to negotiability appeal under 38 U.S.C. § 7422 for the purposes of ratification and Agency Head Review.⁶ Under 38 U.S.C. § 7421, the Secretary for the Department of Veterans of Affairs has the authority to issue regulations for certain Title 38 employees concerning their conditions of employment. But, 38 U.S.C. § 7422(b) and (d), subject this authority to bargaining obligations under Chapter 71 of Title 5, i.e., the Federal Service Labor Management Relations Statute, unless the Secretary concludes a bargaining topic touches upon a matter of "professional conduct or competence." The Agency does not agree to including any provisions related to negotiability matters under 38 U.S.C. § 7422 or the potential impact such negotiability appeals would have on continued bargaining. Specifically, in response to the Union's proposed Article 12 on Negotiability matters under 38 U.S.C. § 7422, the Agency claims that the language pertaining to Title 38 is expressly and solely reserved for the Secretary of the Department of Veterans Affairs. The Agency asserts that it does not waive the rights under 38 U.S.C. § 7422 and that it has no business in the parties' Ground Rules.

The Union takes the position that its proposed language is not contrary to Title 38, does not affect the Agency's authority under Title 38, and is merely aimed to prevent severability, which it refuses to agree to. The Agency objects to the Union presenting a new article and rejects the Union's proposed language as it refuses to waive the Secretary of the Department of Veterans Affairs' authority under 38 U.S.C. § 7422.

The Panel withdraws jurisdiction over this set of proposals – Union Proposals 12.1, 12.2, 12.3, & 12.4. In essence, the Agency is asserting that 38 U.S.C. § 7422 is a management right and, accordingly, is declining to bargain. Thus, a duty to bargain issue exists. The Panel, in accordance with the Authority's decision in *Carswell*, can resolve negotiability or duty to bargain issues raised in an impasse resolution proceeding with the application of existing Authority case law.⁷ If management alleges it does not have a duty to bargain over a union's proposal, in accordance with *Carswell*, the Panel must review Authority case law to determine if there is a substantively similar proposal to the one at impasse which has already been found to be negotiable. The Authority case law is unclear on 38 U.S.C. § 7422 and therefore the Panel withdraws its jurisdiction as there is a colorable duty to bargain issue.

⁶ See Union Proposals 12.1-4

⁷ *Carswell – Commander, Carswell AFB and American Federation of Government Employees, Local 1364*, 31 FLRA 620 (1988) (*Carswell*).

III. Ratification

The parties are at issue over some of the aspects of the Union's ratification of a new CBA. The parties agree on the timeframes following the completion of negotiations, mediation, and FSIP proceedings for the parties to compile and review the draft CBA before the Union will begin ratification.⁸

The Union proposes that it will then have the opportunity to ratify the "entire tentative agreement" within twenty days of beginning ratification.⁹ Next, the Union proposes that if it fails to notify the Agency in writing of the results of its ratification vote or its acceptance without ratification, such failure constitutes the Union's acceptance of the agreement.¹⁰ Additionally, the Union proposes that if it timely notifies the Agency that any portion of the tentative agreement was not ratified, the parties will meet within 20 days to resume negotiations. Following renegotiations, any tentative agreements will again be subject to the ratification provisions as agreed to by the parties.

The Agency proposes that only "any tentative agreements, and any Articles not ordered by the FSIP," shall be subject to Union ratification.¹¹ The Agency also proposes that if the Union fails to notify the Agency in writing of the results of its ratification vote or the Union's acceptance without ratification within the 20 days of the initiation of the ratification period, such failure constitutes the Union's acceptance of agreed upon articles in full. The Agency also seeks to add that the Union's failure also constitutes the Union's waiver of its right to renegotiate the new CBA any further. Last, the Agency proposes that if the Union timely notifies the Agency that any portion of the tentative agreement was not ratified, the parties have 20 days to complete negotiations.¹² After those 20 days, the Agency proposes that any outstanding matters can be forwarded to FMCS or the Panel to break the impasse.

The Union takes issue with the Agency's attempt to place a time limit on any subsequent bargaining and objects to the Agency's attempt to limit the Union's subsequent ratifications, which would be illegal to order upon the Union. The Agency supports its proposals in that they will ensure bargaining is completed in a timely manner and prevent endless cycles of ratifications.

The Panel orders the parties to adopt the Union's language in its Proposal 13.3, in lieu of Agency Proposal 12.3. Contrary to the Agency's argument, the Union's language states that it can ratify a "complete tentative agreement," which clearly does not include any orders from the Panel as the parties have merely "tentatively" agreed to the provisions (i.e., the provisions were not submitted to the Panel because there was an agreement and not an impasse). When the Panel Orders language to be implemented into the parties collective bargaining agreement, that ordered language is not "tentative". Rather, any language that the Panel orders to be implemented into parties' collective bargaining agreements to resolve an impasse is "binding on such parties during the term of the agreement, unless the parties agree otherwise." 5 U.S.C. § 7119(c). Additionally, whether intentional or not, the Agency's language of "any tentative agreements" creates a possible scenario where, arguably, ratification could occur after each separate agreement. The Union's language of a "complete tentative agreement" ensures

⁸ See Agency Proposals 12.1 & 12.2 and Union Proposals 13.1 & 13.2

⁹ See Union Proposal 13.3

¹⁰ See Union Proposal 13.4

¹¹ See Agency Proposal 12.3

¹² See Agency Proposal 12.4

that ratification will involve a complete agreement and will not create the potential for any separation, severance, or otherwise modified ratification, which is a permissive subject of bargaining that the Union is not willing to waive.¹³

The Panel orders the parties to adopt a modified version of the Agency's language in its Proposal 12.4, in lieu of the Union Proposal 13.4. Specifically, the Panel modifies the Agency Proposal 12.3 by removing "...or the FSIP to break the impasse," at the end of the last sentence to bring the language in compliance with 5 U.S.C. § 7119(b). While the Union offered a timeframe to resume bargaining, the Agency offers a more efficient plan. Contrary to the Union's claim, language that directs the parties to resume bargaining and seek FMCS assistance after a certain period of time, does not preclude the parties from continuing to bargain or otherwise affect either party's statutory right to bargain. Additionally, the Panel declines to impose the Union's proposed language that suggests it is entitled to ratify each time the parties come to a complete tentative agreement. As the FLRA has not settled whether a union is statutorily entitled to multiple ratifications, the Panel will not prescribe related language. If the Union, and or the Agency, wants to dispute what is required under the law, either party may pursue such endeavors in more appropriate forums with the FLRA.

IV. Agency Head Review

Here, the Agency proposes to incorporate language from earlier articles pertaining to the perimeters of the Union ratification. The Agency seeks to add language that the parties shall begin execution of the agreement if the Union fails to notify the Agency within the proposed timeframe of 20 days.¹⁴ Additionally, the Agency proposes language that the parties shall begin execution of the agreement upon a decision by the Panel, which is in reference to the Agency's earlier proposals that seek to limit the Union's ratification to only those provisions tentatively agreed to by the parties. The Union proposes language that only includes the Union's notice of ratification to the Agency as triggering the parties' execution of the agreement.¹⁵

The Union reiterates its objection to the Agency's proposed restrictions on Union ratification while the Agency again asserts that its proposal will prevent the Union from unnecessarily delaying negotiations.

The Panel orders the parties adopt a modified version of the Agency Proposal 13.1 and the Union Proposal 14.1. A majority of both parties' language in this article is confusing and unnecessary. The Statute establishes the Agency Head Review process very clearly in 5 U.S.C. § 7114(c). The parties both proposed that the parties follow 5 U.S.C. § 7114(c), as they should, which sets forth the timeframe and process for Agency Head Review. Although the parties agree on the rest of the proposals, neither party has provided a sufficient reason why the parties need to include additional language that either

¹³ The FLRA has found that in collective bargaining, union membership ratification is a statutory right that "flows" from 5 U.S.C. §7102. *See Social Security Administration and AFGC, Council 220*, 46 FLRA 1404 (1993). In the course of collective bargaining, a proposal that implicates a waiver of a statutory right is a permissive topic of bargaining. If an exclusive representative elects to negotiate away a statutory right, such waiver must be clear and unmistakable. *See Library of Congress*, 9 FLRA 427 (1982).

¹⁴ *See* Agency Proposal 13.1

¹⁵ *See* Union Proposal 14.1

repeats what is in the Statute or creates the potential for conflicting interpretations. The Panel orders the following language modified from the Agency Proposals 13.1, 13.2, and 13.3/Union Proposals 14.1, 14.2, and 14.3 and orders the parties to withdraw their other proposals.

The Agency Head will have thirty (30) calendar days from the date of the execution of the Successor Master Contract to complete Agency Head Review pursuant to 5 U.S.C. § 7114(c) and provide written notice to the Union of approval or disapproval. The effective date of the Successor Master Contract will be clearly stated on its cover page.

V. MOU Effective Date

Lastly, the parties' differences over the parameters of the Union's ratification are again apparent in proposals contemplating ratification of the Ground Rules MOU themselves. While the parties agree that the Ground Rules MOU shall be subject to ratification by the Union in accordance with the ratification procedures in the MOU, as discussed earlier, the parties are not in agreement over that ratification procedure. Reinforcing the Agency's position on Union ratification, the Agency again seeks to include language that specifically excludes orders from the Panel from Union ratification.¹⁶ Consistent with its earlier ratification proposals, the Union proposes language that does not include an exclusion for Panel orders.¹⁷ The parties are in agreement over the MOU having the full force and effect until the negotiations over the new CBA are complete and the new CBA is in effect.¹⁸

The Panel orders the parties adopt a modified version of the parties' proposals: Union Proposal 15.1 and Agency Proposal 14.1. The parties are largely in agreement over the language in this first section. For the sake of clarity and consistency with the parties' ratification article, the Panel orders replacing the Union's reference to a specific article number with reference to the ratification process "set forth above" and remove the Agency's reference to the Panel's decisions, which is unnecessary as previously discussed.

The Panel orders the parties to withdraw their proposals, Union Proposal 15.2 and Agency Proposal 14.2. As discussed in the previous article, the parties are subject to the Agency Head Review process set forth in 5 U.S.C. § 7114(c).

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

January 18, 2021
Washington, D.C.

¹⁶ See Agency Proposals 14.1 and 14.2

¹⁷ See Union Proposals 15.1 and 15.2

¹⁸ See Union Proposal 15.3 and Agency Proposal 14.3

VA/NAGE Ground Rules MOU – Language in dispute

Agency Proposed Language

11 Negotiability Before Agency Head Review:

11.1. Any action filed by either Party concerning these negotiations, including but not limited to, grievances, negotiability appeals, and unfair labor practice charges will not delay further bargaining while the action is pending, except by mutual written agreement. If the Department declares a proposal/counterproposal non-negotiable or fails to respond to the Union's request for an allegation of non-negotiability, the Parties will attempt to reach agreement on all other provisions in that Article and other Articles. While the Parties will continue to bargain the provisions that are not the subject of a negotiability appeal, the remaining bargaining does not sever those matters, that fall under FLRA jurisdiction, for the purpose of ratification and agency head review.

11.2 Within fifteen (15) business days of receipt of a determination by the FLRA that a matter proposed for negotiations is within the duty to bargain, either party may initiate negotiations on the matter, except when either party makes a timely written request for judicial review of the FLRA's decision in accordance with the Statute.

~~11.3 — 38 U.S.C. 7422 Determinations Before Agency Head Review~~

~~11.4 — If the Department alleges that a proposal or counter proposal relating to Title 38 Employees is non-negotiable pursuant 38 U.S.C. § 7422, the Parties shall avail themselves of the Department's procedures to obtain a determination by the Secretary of Veterans Affairs or his/her designee.~~

~~11.5 — If an issue is determined by the Secretary of Veterans Affairs to be negotiable under Title 38, section 7422, the issue will, upon the Union's request, be negotiated within fifteen (15) business calendar days of receipt of the determination.~~

~~11.6 — Nothing in this Article shall preclude the right of the Union to seek judicial review of the Secretary of Veterans Affairs' 38 U.S.C § 7422 determinations in accordance with applicable law.~~

~~11.7 — While the Parties will continue to bargain the provisions that are not the subject of pending 38 U.S.C. § 7422 determines, the remaining bargaining does not sever those matters, for the purpose of ratification and agency head review.~~

12. (NAGE 13) Ratification

12.1 Once negotiations, mediation, and FSIP proceedings have been completed, the Parties will each have five (5) business days to compile their draft contracts and exchange them.

12.2 Both Parties will review the draft documents to ensure that the draft Successor Master Contract conforms to the initialed and imposed provisions and contains all negotiated language. The Parties will edit the draft copy to correct any missing negotiated language, misspellings, incorrect references or any other technical correction necessary within five (5) business days. After the ten (10) business days are complete, NAGE shall initiate its ratification procedure.

12.3 The Union will have twenty (20) business days to ratify any tentative agreements, and any Articles not ordered by the FSIP. ~~the complete tentative agreement.~~ The Union will provide written notification to the Department of the results of the ratification vote, or of its acceptance without ratification, no later than close of business on the twentieth (20th) business day of the ratification period. Failure on the part of the Union to provide such notice, will constitute an adoption of the ~~agreement tentative agreement~~ agreed upon articles in full by the Union, and a waiver of the right to renegotiate the Successor Master Agreement further by the Union.

12.4 If the Union notifies the Department the tentative agreement was not ratified pursuant to Section 12.X, the Parties will have twenty calendar days in which to complete any further negotiations. After those twenty calendar days any matters still not resolved can be forwarded by either party to FMCS or the FSIP to break the impasse. ~~meet within~~

~~twenty (20) thirty (30) business days to resume negotiations. Upon completion of renegotiations, the tentative agreement shall again be subject to ratification in accordance with this MOU.~~

13 (NAGE section 14) Agency Head Review

13.1 When the Union provides formal Notice to the Department that it has ratified the Successor Master Contract **or fails to notify the Department in the agreed to timeframe, or upon decision and order of the FSIP**

the Chief Negotiators, within three (3) business days, will jointly execute the Successor Master Contract and will provide notice to the head of the Department. If either Party fails to sign within the three (3) business day period, the agreement will be considered executed at 12:00 am Eastern Time on the fourth (4th) business day. The Agency Head will have thirty (30) calendar days from the date of the execution of the Successor Master Contract to complete Agency Head Review pursuant to 5 U.S.C. § 7114(c) and provide written notice to the Union of approval or disapproval.

13.2 The Parties shall negotiate over the provision(s) disapproved under 5 U.S.C. § 7114(c), and any other provision at the election of either party (not subject to a negotiability appeal) within five (5) business days of the Agency Head's written notice of disapproval to the Union. Any subsequent agreement reached will be resubmitted to the Agency Head for Agency Head Review pursuant to 5 U.S.C. § 7114(c) after execution by the Parties.

13.3 If the Successor Master Contract is approved by the Agency Head, it will become effective on the date of approval. If the Successor Master Contract is neither approved or disapproved within the thirty (30) day period, it will take effect on the thirty-first (31st) day following the date of execution and shall be binding on the Department and the Union pursuant to 5 U.S.C. § 7114(c)(1) and (3). The effective date of the Successor Master Contract will be clearly stated on its cover page.

14. MOU Effective Date

14.1 At the election of the Union, this tentative MOU agreement shall be subject to ratification, following the procedures set forth in ~~Article XX of this MOU~~ unless ordered by the FSIP.

14.2 ~~Once ratified,~~ or ordered by the FSIP, this MOU will become effective thirty (31) calendar days following execution by both Parties, or FSIP decision and order, unless Agency Head Approval is completed earlier in compliance with 5 U.S.C. § 7114(c).

14.3 Upon its effective date, this MOU will remain in full force and effect until such time as negotiations are completed and the Successor Master Contract is in effect.

This MOU is negotiated by the following individuals who have the authority to bind their respective Party.

11. Negotiability Before Agency Head Review:

- 11.1 Any action filed by either Party concerning these negotiations, including but not limited to, grievances, negotiability appeals, and unfair labor practice charges will not delay further bargaining while the action is pending, except by mutual written agreement. If the Department declares a proposal/counterproposal non-negotiable or fails to respond to the Union's request for an allegation of non-negotiability, the Parties will attempt to reach agreement on all other provisions in that Article and other Articles. While the Parties will continue to bargain the provisions that are not the subject of a negotiability appeal, the remaining bargaining does not sever those matters for the purpose of ratification and agency head review.
- 11.2 Within fifteen (15) business days of receipt of a determination by the FLRA that a matter proposed for negotiations is within the duty to bargain, either party may initiate negotiations on the matter, except when either party makes a timely written request for judicial review of the FLRA's decision in accordance with the Statute.

12. 38 U.S.C. § 7422 Determinations Before Agency Head Review

- 12.1 If the Department alleges that a proposal or counter proposal relating to Title 38 Employees is non-negotiable pursuant 38 U.S.C. § 7422, the Parties shall avail themselves of the Department's procedures to obtain a determination by the Secretary of Veterans Affairs or his/her designee.
- 12.2 If an issue is determined by the Secretary of Veterans Affairs to be negotiable under Title 38, section 7422, the issue will, upon the Union's request, be negotiated within fifteen (15) business days of receipt of the determination.
- 12.3 Nothing in this Article shall preclude the right of the Union to seek judicial review of the Secretary of Veterans Affairs' 38 U.S.C § 7422 determinations in accordance with applicable law.
- 12.4 While the Parties will continue to bargain the provisions that are not the subject of pending 38 U.S.C. § 7422 determinations, the remaining bargaining does not sever those matters, for the purpose of ratification and agency head review.

13. Ratification

- 13.1 Once negotiations, mediation and FSIP proceedings have been completed, the Parties will each have five (5) business days to compile their draft contracts and exchange them.
- 13.2 Both Parties will review the draft documents to ensure that the draft Successor Master Contract conforms to the initialed and imposed provisions and contains all negotiated language. The Parties will edit the draft copy to correct any missing negotiated language, misspellings, incorrect references or any other technical correction necessary within five (5) business days. After the ten (10) business days are complete, NAGE shall initiate its ratification procedure.
- 13.3 The Union will have twenty (20) business days to ratify the complete tentative agreement. The Union will provide written notification to the Department of the results of the ratification vote, or of its acceptance without ratification, no later than close of business on the twentieth (20th) business day of the ratification period. Failure on the part of the Union to provide such notice, will constitute an adoption of the agreement by the Union.
- 13.4 If the Union notifies the Department that the tentative agreement was not ratified pursuant to Section 13.3, the Parties will meet within twenty (20) business days to resume negotiations. Upon completion of renegotiations, the tentative agreement shall again be subject to ratification in accordance with this MOU.

14. Agency Head Review

- 14.1 When the Union provides formal notice to the Department that it has ratified the Successor Master Contract, the Chief Negotiators, within three (3) business days, will jointly execute the Successor Master Contract and will provide notice to the head of the Department. If either Party fails to sign within the three (3) business day period, the agreement will be considered executed at 12:00 am Eastern Time on the fourth (4th) business day. The Agency Head will have thirty (30) calendar days from the date of the execution of the Successor Master Contract to complete Agency Head Review pursuant to 5 U.S.C. § 7114(c) and provide written notice to the Union of approval or disapproval.
- 14.2 The Parties shall negotiate over the provision(s) disapproved under 5 U.S.C. § 7114(c), and any other provision at the election of either party (not subject to a negotiability appeal) within five (5) business days of the Agency Head's written notice of disapproval to the Union. Any subsequent agreement reached will be resubmitted

to the Agency Head for Agency Head Review pursuant to 5 U.S.C. § 7114(c) after execution by the Parties.

- 14.1. If the Successor Master Contract is approved by the Agency Head, it will become effective on the date of approval. If the Successor Master Contract is neither approved or disapproved within the thirty (30) day period, it will take effect on the thirty-first (31st) day following the date of execution and shall be binding on the Department and the Union pursuant to 5 U.S.C. § 7114(c)(1) and (3). The effective date of the Successor Master Contract will be clearly stated on its cover page.

15. MOU Effective Date

- 15.1 At the election of the Union, this tentative MOU agreement shall be subject to ratification, following the procedures set forth in Article 13 of this MOU.
- 15.2 Once ratified, this MOU will become effective thirty-one (31) calendar days following execution by both Parties, unless Agency Head Approval is completed earlier in compliance with 5 U.S.C. § 7114(c).
- 15.3 Upon its effective date, this MOU will remain in full force and effect until such time as negotiations are completed and the Successor Master Contract is in effect.

This MOU is negotiated by the following individuals who have the authority to bind their respective Party.