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Article 5

Union Initiated Mid-Term Bargaining

Section 1. General

- A. Union initiated mid-term bargaining will address negotiable subjects of bargaining as defined by 5 U.S.C. 71 and applicable case law. The parties agree that Management may elect or not elect to bargain over subjects relating to 5 U.S.C. 7106(b)(1) regarding Union initiated mid-term bargaining matters.
  
- B. The parties agree that the Union may only initiate mid-term bargaining on matters not contained in or covered by the National Agreement and not waived. The terms “contained in and covered by” and “waived” have the meanings as defined by FLRA case law.
  
- C. The Union will provide Management with reasonable advance notice of its desire to engage in Union initiated bargaining with an explanation of the matter in question. Also, the notice will include an initial proposal and suggested dates for bargaining. A particular demand will only cover one proposed change and will identify the affected employees.
  
- D. Union initiated mid-term negotiations will be conducted only at the General Committee or Component Level.

20 E. Union initiated mid-term bargaining can be invoked ~~3 one-times~~ per year by each  
21 Council president and one time per year by a spokesperson of ~~at~~ the General  
22 Committee **Level.** ~~(Maximum of 7 bargaining sessions can be invoked each year).~~ If  
23 any of the Council Presidents or the Spokesperson do not invoke Union initiated mid-  
24 term bargaining in any given year of the National Agreement, ~~T~~there will be no  
25 carryover from year to year. For purposes of this Article, a year is defined as the  
26 effective date of the National Agreement to the year anniversary of the Agreement.

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29 Section 2. Process

30 A. The Spokesperson of the General Committee, ~~Council President~~ or designee will  
31 provide the Associate Commissioner, Office of Labor-Management and Employee  
32 Relations or designee with timely electronic notice of the request. The request will be  
33 directed to a Management designated electronic mailbox. The request will be  
34 considered received on the first workday after the day of transmission of the E-mail.

35 B. Management will respond to the request electronically to a Union designated  
36 electronic mail box within ten workdays after receipt from the Union. If bargaining is  
37 required, the designated representatives will make appropriate arrangements.

38 C. Bargaining will be scheduled as soon as possible after the date of an appropriate  
39 request, but no later than 30 calendar days.

40 D. Bargaining, including preparation and mediation, will not exceed 3 working days.

41 Normally, travel will occur on Monday and on Friday.

42 E. Both sides will be entitled to 2 negotiators. Negotiators for bargaining may be drawn

43 from any component. **Each party will bear its own costs for all bargaining**

44 **activities.** ~~The Agency will pay travel and per diem for one union negotiator, if both~~

45 ~~negotiators are in travel status.~~ Official time used by the designated **official time**

46 **users for these negotiations** ~~Union negotiators~~ will be in accordance with Article 30.

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49 Section 3. Ground Rules – Union Initiated Bargaining

50 A. Purpose

51 The following ground rules apply to all Union initiated mid-term bargaining. Absent

52 mutual consent to modify these ground rules, no other ground rules will apply.

53 B. Briefing Sessions

54 The Agency may request a briefing session to explore or explain the issue related to the

55 Union initiated request, and its effect on bargaining unit employees. This session may be

56 scheduled in advance of the start of actual negotiations. Where the negotiators are

57 geographically separated, the parties will normally conduct the briefing by telephone.

58 Time spent for the briefing will not be considered part of the negotiations time.

59 C. Arrangements

- 60 1. Negotiations will be held in a suitable meeting room at a site determined by  
61 the parties. Where possible, government space will be used.
- 62 2. The date negotiations will begin and the daily schedule will be established  
63 through consultation. If no agreement is reached on a beginning date,  
64 bargaining will start in sufficient time to complete negotiations within the  
65 overall timeframe set above.
- 66 3. Absent mutual consent, flextime for negotiators will be suspended for the  
67 duration of the negotiations to maximize meeting time available for  
68 bargaining.
- 69 4. Alternates may substitute for bargaining team members. Such alternates will  
70 be entrusted with the right to speak for and to bind the members for whom  
71 they substitute.

72 D. Routine

- 73 1. In regard to each negotiation, the parties will mutually agree on the method of  
74 bargaining (traditional or interest based) to be utilized. If the parties cannot  
75 agree, the traditional method will be used.
- 76 2. During negotiations, the chief negotiator for each party will signify agreement  
77 on each section by initialing the agreed upon section. The chief negotiator for  
78 each party will retain his/her copies and initial the other party's copy. This will  
79 not preclude the parties from reconsidering or revising any agreed upon  
80 section by mutual consent.

81           3. It is agreed that either party requesting a caucus will leave the bargaining  
82           room to caucus ~~in a room provided by management~~. There is no limit on the  
83           number of caucuses which may be held, but each party will make every effort  
84           to restrict the number and length of caucuses.

85           4. The Agreement shall not be completed and finalized until all proposals have  
86           been disposed of by mutual consent. Negotiation disputes, including  
87           questions of negotiability and impasse items, will be processed in a manner  
88           consistent with 5 U.S.C. 71 and implementing regulations. This will not serve  
89           as a bar to the parties concluding by mutual consent a general agreement on  
90           those items which have been or remain to be negotiated.

91   E. Maintenance of Records

92           1. It is agreed that no official transcript will be made of the bargaining  
93           proceedings. However, each party may make and keep its own notes and  
94           records.

95           2. The bargaining proceedings will not be recorded by means of any  
96           tape/electric/electronic recording device.

97   F. Authority

98   Each party shall be represented at the negotiations at all times by one duly authorized  
99   chief negotiator/chief spokesperson who is prepared and authorized to discuss and

100 negotiate on matters subject to negotiations and to sign off on agreements for their  
101 respective party.

102 G. Reopening

103 1. Questions of Negotiability

104 a. If any proposal is claimed to be non-negotiable by either party and  
105 subsequently determined to be negotiable, or the declaring party  
106 withdraws its allegations of non-negotiability, the proposal will, upon  
107 request, be reopened within a reasonable period of time. Such requests for  
108 bargaining must be made within 60 calendar days. Nothing in this section  
109 will preclude the right of judicial appeal.

110 b. This procedure does not preclude the parties from revising any proposals  
111 to overcome questions of negotiability during the period of negotiations.

112 2. Any provisions disapproved by the Agency head review may be referred to  
113 the FLRA by the Union. Any provision held negotiable will be incorporated  
114 into the Agreement. The parties will commence negotiations within a  
115 reasonable period after receipt of an FLRA decision sustaining the Agency's  
116 determination of non-negotiability.

117 3. All timeframes in these ground rules may be modified by mutual consent.

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