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

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30 **Section 2. Process**

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

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

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

43 ~~D. Bargaining, including preparation and mediation, will not exceed 3 working~~
44 ~~days. Normally, travel will occur on Monday and on Friday.~~

45 ~~E. Both sides will be entitled to 2 negotiators. Negotiators for bargaining may be~~
46 ~~drawn from any component. The Agency will pay travel and per diem for one~~
47 ~~union negotiator, if both negotiators are in travel status. Official time used by~~
48 ~~the designated Union negotiators will be in accordance with Article 30.~~

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51 **~~Section 3. Ground Rules – Union Initiated Bargaining~~**

52 ~~A. Purpose~~

53 ~~The following ground rules apply to all Union initiated mid-term bargaining.~~

54 ~~Absent mutual consent to modify these ground rules, no other ground rules will~~
55 ~~apply.~~

56 ~~B. Briefing Sessions~~

57 ~~The Agency may request a briefing session to explore or explain the issue~~
58 ~~related to the Union initiated request, and its effect on bargaining unit employees.~~

59 ~~This session may be scheduled in advance of the start of actual negotiations.~~

60 ~~Where the negotiators are geographically separated, the parties will normally~~

61 ~~conduct the briefing by telephone. Time spent for the briefing will not be~~
62 ~~considered part of the negotiations time.~~

63 ~~C. Arrangements~~

64 ~~1. Negotiations will be held in a suitable meeting room at a site~~
65 ~~determined by the parties. Where possible, government space will be~~
66 ~~used.~~

67 ~~2. The date negotiations will begin and the daily schedule will be~~
68 ~~established through consultation. If no agreement is reached on a~~
69 ~~beginning date, bargaining will start in sufficient time to complete~~
70 ~~negotiations within the overall timeframe set above.~~

71 ~~3. Absent mutual consent, flextime for negotiators will be suspended for~~
72 ~~the duration of the negotiations to maximize meeting time available for~~
73 ~~bargaining.~~

74 ~~4. Alternates may substitute for bargaining team members. Such~~
75 ~~alternates will be entrusted with the right to speak for and to bind the~~
76 ~~members for whom they substitute.~~

77 ~~D. Routine~~

78 ~~1. In regard to each negotiation, the parties will mutually agree on the~~
79 ~~method of bargaining (traditional or interest based) to be utilized. If the~~
80 ~~parties cannot agree, the traditional method will be used.~~

81 ~~2. During negotiations, the chief negotiator for each party will signify~~
82 ~~agreement on each section by initialing the agreed upon section. The~~
83 ~~chief negotiator for each party will retain his/her copies and initial the~~
84 ~~other party's copy. This will not preclude the parties from reconsidering~~
85 ~~or revising any agreed upon section by mutual consent.~~

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

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

98 ~~E. Maintenance of Records~~

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

102 ~~2. The bargaining proceedings will not be recorded by means of any~~
103 ~~tape/electric/electronic recording device.~~

104 ~~F. Authority~~

105 ~~Each party shall be represented at the negotiations at all times by one duly~~
106 ~~authorized chief negotiator/chief spokesperson who is prepared and authorized~~
107 ~~to discuss and negotiate on matters subject to negotiations and to sign off on~~
108 ~~agreements for their respective party.~~

109 ~~G. Reopening~~

110 ~~1. Questions of Negotiability~~

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

117 ~~b. This procedure does not preclude the parties from revising any~~
118 ~~proposals to overcome questions of negotiability during the period~~
119 ~~of negotiations.~~

120 ~~2. Any provisions disapproved by the Agency head review may be~~
121 ~~referred to the FLRA by the Union. Any provision held negotiable will~~

122 ~~be incorporated into the Agreement. The parties will commence~~
123 ~~negotiations within a reasonable period after receipt of an FLRA~~
124 ~~decision sustaining the Agency's determination of non-negotiability.~~

125 ~~3. All timeframes in these ground rules may be modified by mutual~~
126 ~~consent.~~