

ARTICLE 5 Midterm Negotiations

This Article governs the mid-term bargaining relationship of the parties over matters which are not covered by this agreement. The Agency will fulfill its midterm statutory bargaining obligations.

The purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite mid-term negotiations in the interests of the Agency, the Union, employees, and Agency stakeholders.

Section 1. Mid-Term Negotiation Parameters

As set forth in Article 14 (Duration), the terms of this Agreement shall remain unchanged during its entire term, except as provided by this Agreement or as required by law.

Section 2. Mid-Term Negotiation Procedures

- A. Notice: When the Employer wishes to implement negotiable changes in personnel policies, practices and working conditions the Employer will provide the Union advanced notice of the proposed changes in working conditions in accordance with the law. Notice shall be provided as far in advance as possible taking into account the nature and scope of the proposed change and the need for timely implementation.
- B. Authorized Representatives: The parties will approach negotiations in good faith with a sincere resolve to efficiently reach an agreement. Only the Union designated representative and Agency representative, as designated by the Director of the Labor and Employee Relations Division (LERD), may negotiate and execute a mid-contract memorandum.
- C. Request to Bargain and Proposals: If a party intends to exercise its bargaining rights regarding a proposed change that creates a statutory duty to bargain, the party must request to bargain and submit timely bargaining proposals in writing. The request must be in accordance with the procedures and time frames in this Article, or the party will be considered to have waived its right to bargain.
- D. Implementation: Where the Union wishes to negotiate over the proposed change, the Employer may delay implementation of such change until the parties have reached agreement on the proposed change unless the change is de minimis, required by law to implement prior to reaching agreement, or falls under the "Necessary Functioning" Doctrine.

Section 3. Content of Agency Notice of Mid-Term Bargaining

The Agency-written notice for mid-term bargaining shall include:

1. A description of the proposed change;
2. The known nature and scope of the proposed change;
3. The planned timing of the change;
4. The Agency's point of contact; and
5. Any relevant documents or attachments.

Section 4. Service of Notices

- A. All notices will be by email. The email will contain “notice” in the subject line.
- B. The Agency shall serve such notice to the EPA Unit President. *If the EPA Unit President is out of the office for five or more work days, the notice shall be sent to their designee.*
- C. Union Demand to Bargain: The Union must submit a written demand to bargain no later than five (5) work days from the receipt of the Agency’s notice. If no briefing is requested, it will have ten (10) workdays from demand to bargain to submit written proposals. The union may timely request an extension to submit proposals.
- D. Briefing: The Union may request a briefing on the proposed change by submitting a written request within five (5) work days of the actual receipt of the notice. If a briefing is requested, it will be scheduled to occur within five workdays after the Agency receives the Union’s request for briefing unless the Agency’s subject matter experts (SMEs) are not available within the five workdays. In cases where the Agency cannot provide the Union with a briefing within five workdays, the Agency will schedule the briefing as early as practicable. If the Union requests a briefing, it will have ten (10) workdays from the date of the briefing to submit written proposals over the requested change. The union may timely request an extension to submit proposals.
- E. Timeframe to Begin Bargaining: The Parties will make best efforts to commence negotiations no later than ten (10) workdays after the Union submits its bargaining proposals; or as soon as possible.

Section 5. Mid-Term Bargaining Ground Rules

The following ground rules will govern all mid-term bargaining; there will be no further bargaining on additional ground-rules.

- A. Minimize Bargaining Costs: The parties will minimize, to the greatest extent possible, Agency and Union expenditures during negotiations. As such, virtual, telephonic and all other means of low-cost negotiations will be utilized to the greatest extent possible.
- B. Coordinate Bargaining: Where practicable and agreeable, the parties will coordinate negotiation meetings with other scheduled meetings.
- C. All negotiations will be virtual unless otherwise agreed by the parties.
- D. Face-to-Face Negotiations: Face-to-face negotiations will occur by mutual agreement of the Parties as follows:
 - (1) Negotiations will generally take place at an Agency-provided location.
 - (2) Negotiations will be conducted during the regular business hours of operation where the negotiations are taking place. Participant schedules will be adjusted to allow for bargaining per Section H, and to account for all time spent on official time.
- E. Consolidated Bargaining: If both parties consent, negotiations on different proposed changes may be consolidated or held concurrently.

E. Travel and Per Diem: Each party is responsible for the travel and per diem costs of its team associated with negotiations for all phases of negotiations, inclusive of assistance before the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP). To the extent the Parties participate in third party proceedings, the Parties will request such proceeding occur in the San Francisco Bay Area.

D. Proposals: Proposals must be negotiable and must be related to the proposed change. Where applicable, if proposals are appropriate arrangements, such proposals must identify the adverse impact upon the employees that the proposals are intended to reduce or remedy. At any point in the bargaining process, the party proposing the change may elect to withdraw any proposed change, in whole or in part. However, nothing considered in this paragraph shall prevent either party from subsequently initiating negotiations over the same subject matter.

E. Number of Negotiators/Spokesperson Authorities/Alternates:

1. The number of Union negotiators representing the Union in bargaining under this Article who will be authorized official time under section 7131(a) of the Statute for such purposes during the time the employee otherwise would be in regular duty status, shall not exceed the number of Agency negotiators. The Agency will inform the Union of the number of Agency negotiators after the Agency receives the Union's bargaining proposals.

2. Each party shall be represented at the negotiations at all times by one duly authorized chief negotiator or designee, who is prepared and authorized to reach agreement on all matters subject to negotiations and to sign-off on agreements for their respective party.

3. The parties will exchange the names of their bargaining team members for the specific issues to be negotiated no later than three (3) work days prior to the commencement date of the bargaining. Alternates may substitute for team members with advanced notice to the other side. Such alternates will be entrusted with the right to speak for and bind the members for whom they substitute. Inability to have all team members present will not delay negotiations.

F. Subject Matter Experts (SMEs): Technical advisors and SMEs may be used by each party with a limit of one technical adviser/SME at a time. The requesting party will be responsible for all costs associated with the attendance of technical advisors/SMEs. Technical advisors or SMEs that are Agency employees will be on agency time while attending negotiations sessions. Technical advisors/SMEs shall be excused once they have served their purpose.

G. Silent Observers: Either party is authorized up to one silent observer to attend negotiations. Silent observers are not authorized to speak during negotiation sessions. Union silent observers are voluntary thus, they shall not be authorized official time. The Agency and Union will introduce silent observers by name and association at the beginning of negotiation sessions.

H. Mid-Term Bargaining Schedule: Negotiation sessions dates and times shall be by mutual agreement. The parties shall meet at reasonable times and as frequently as may be necessary, and to avoid unnecessary delays. Negotiation sessions will generally be scheduled to occur three (3) days per week, unless the parties agree on a different timeframe.

I. Caucus: Either team may request a caucus. The length of the caucus will be determined by what is reasonable by the Party calling the caucus. However, caucuses shall not normally exceed 30 minutes.

J. Failure to Reach Agreement: If an agreement is not reached the parties will exchange a last and best offer; and request the mediation services of the Federal Mediation Conciliation Services (FMCS). Mediation shall be scheduled within five work days or as soon as a mediator is available, unless the parties consent otherwise. If the parties cannot reach a voluntary settlement with the assistance of a FMCS mediator, either side, or the parties jointly, may seek assistance from the Federal Service Impasses Panel.

K. Memorializing Agreement: Agreements will be in the form of memoranda of understanding (MOUs)/memoranda of agreement (MOAs). Upon agreement of each section, the chief negotiator for each party (or designee) will signify temporary agreement on each section of the MOU/MOA by initialing and dating the agreed upon section(s) of the working documents. Upon agreement of the entire MOU/MOA, the chief negotiator for each party will sign and date two copies of the MOU/MOA to signify final agreement.

1. All MOUs/MOAs signed by the parties and entered into during the life of the parties' master collective bargaining agreement (MCBA) will be considered an addendum to this agreement and subject to its duration, unless a shorter expiration date has been agreed to in the MOU/MOA.

2. All MOUs/MOAs signed by the Parties are subject to Agency Head Review, consistent with 5 U.S.C. 7114.

L. Official Time: Official time for negotiations under this Section shall be provided consistent with 5 U.S.C. 7131(a).

1. Up to 8 hours of official time will be granted, depending upon complexity, for preparation per weekly negotiation session per union team, unless otherwise requested by the union and approved by the Agency. Such time will be administered in accordance with Article 2.

2. Union negotiator's schedules and workloads will be reasonably adjusted to ensure they are available to perform tasks.

M. Nothing in this article constitutes a waiver on the part of the Union. The Union expressly reserves all rights and remedies under the FLRA.

FOR ESC:

FOR EPA: