

## **Midterm Bargaining**

The Parties agree that there are circumstances when negotiations are appropriate during the life and term of this Agreement. Only new issues or issues not covered by this MCBA are subject to midterm negotiations. The purpose of this Article is to establish a complete and orderly process to improve efficiency and expedite midterm negotiations in the interests of the Agency, the Union, and employees. When the Agency, at any level, proposes a negotiable change, including but not limited to a personnel policy, practice, working condition, condition of employment, and procedures and appropriate arrangements associated with the exercise of a management right, the Union may demand to bargain.

### **Section 1. Mid-Term Negotiation Procedures**

- A. **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), or its successor division, may negotiate and execute a mid-contract memorandum.
  
- B. **Demand to Bargain and Proposals:** If a party intends to exercise its bargaining rights regarding a proposed change, the party must demand 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. It is understood the Agency is not required to negotiate its decisions that do not adversely affect the bargaining unit.
  
- C. Notice of proposed changes will be provided to the Council President. In matters exclusive to a local union or geographic location (e.g., reorganizations or office moves) notice of proposed changes will be provided to the Local President of the affected bargaining unit. AFGE is responsible for keeping the Agency apprised of which Local Presidents represent which bargaining units through written notice to the Agency's Labor and Employee Relations Director or successor office.

### **Section 3. Content of Agency Notice**

- A. The Agency-written notice must include:
  - 1. The nature and scope of the proposed change;
  - 2. The proposed date of implementation or planned timing of the change;
  - 3. Potential impact on bargaining unit employees; and
  - 4. The Agency's point of contact.
  
- B. The Agency may include a pre-scheduled briefing date and time, in which case the timeline in Section 4.B. will apply. If the Agency pre-schedules a briefing it will occur within six (6) working days of the notice.

- C. Written Notice will be provided through email. The Agency will provide Written Notice no later than 15 days prior to implementation of the proposed change, if possible.
- D. Before implementing any negotiable proposed change, the Agency will meet its obligations under the law to provide notice. Barring applicable exceptions, the Agency will meet its obligation to bargain, which generally means negotiating to an agreement with the Union before implementation or proceeding to impasse procedures.

#### **Section 4. Communications and Timeframes**

- A. All notices and written communications will be by email.
  - 1. If the Union demands to bargain, it shall inform the Agency within seven (7) working days from receipt of Written Notice.
  - 2. Within ten (10) working days from receipt of Written Notice, the Union shall submit written proposals unless a briefing has been requested.
  - 3. If the Union requests a briefing, such request must be within three (3) workdays from receipt of Written Notice.
  - 4. If a briefing is requested, the Agency will schedule the briefing to occur within three (3) workdays of the Union's request.
  - 5. If the Union requests a briefing, the Union's written proposals shall be due within four (4) working days of the briefing.
- B. Timeframe to Begin Bargaining: Bargaining shall commence as soon as possible, but no later than five (5) workdays after the Union submits its proposals. The Agency will propose its counter at the initial bargaining meeting.
- C. By written agreement in advance of the deadlines, the parties may mutually agree to an extension of these time frames.

#### **Section 5. Re-opening this MCBA**

The Parties agree that there may be circumstances under which reopening this MCBA is beneficial. Reopening of this MCBA is covered in the Duration Article of this Agreement.

#### **Section 6. Local Bargaining**

There are circumstances where local bargaining is appropriate. Local negotiations will follow the Mid-Term Ground Rules below.

#### **Section 7. Mandatory and Permissive Subjects**

The Parties agree that, where appropriate, topics covered by 5 USC 7106(b)(1) will be bargained pursuant to this Article.

## **Section 8. Mid-Term Bargaining Ground Rules**

The following ground rules will govern all mid-term bargaining. Upon mutual agreement of the parties these ground rules may be further negotiated.

- A. Minimize Bargaining Costs: The parties will minimize Agency and Union expenditures during negotiations.
- B. All negotiations will be virtual unless otherwise agreed by the Parties.
- C. Face-to-Face Negotiations will occur by mutual agreement as follows:
  - 1. Negotiations will generally take place at an Agency-provided location at the geographical location of the Region/Office. The location for national negotiations will be determined by the Parties.
  - 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 a full week of bargaining and to account for all time spent on official time and for related negotiations travel.
- D. Consolidate 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, including assistance before the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP).
- F. Proposals: Proposals must be negotiable and must be related to the proposed change. At any point in the bargaining process, the party proposing the change may elect to withdraw any proposed change, in whole or in part. Negotiability of proposals can be submitted for mediation and arbitration if necessary.
- G. Number of Negotiators/Spokesperson Authorities/Alternates:
  - 1. Each party will be represented at 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.
  - 2. The number of negotiators for either Party shall not exceed three (3) plus the notetaker for each Party.

3. Each party will designate its own representatives. The parties will exchange the names of their bargaining team members for the specific issues to be negotiated no later than 3 workdays prior to the commencement date of bargaining.
4. Alternates:
  - i. Alternates may substitute for team members with advanced notice to the other side.
  - ii. Such alternates will be entrusted with the right to speak for and bind the members for whom they substitute.
5. Inability to have all team members present will not delay negotiations.

H. Mid-Term Bargaining Schedule:

1. Negotiations will normally be held Tuesday through Thursday. Participants' work schedules may be adjusted to allow for an 8-hour day, five-day work week, full week of bargaining and to account for all time.
  2. Bargaining sessions will normally commence at 10:00 a.m. and conclude no later than 5:00 p.m. local time, with thirty (30) minutes allocated for lunch and two fifteen (15) minute breaks.
- I. Caucus: Either team may request a caucus and may leave the negotiating room to caucus. The time needed for caucus will be communicated by the requesting Party and agreed upon by all Parties prior to leaving the negotiating room. There is no limit to the number of caucuses which may be held, but each party must make a concerted effort to restrict the number and length of the caucuses. Caucuses cannot be held at the start or end of a negotiating day.
- J. If no agreement is reached by the parties on a particular issue after either Party has presented their "last and best offer" either party may involve an FMCS mediator and mediation sessions will be scheduled as soon as practicable. The Parties will remain in mediation until such time the mediator releases the Parties or fourteen (14) calendar days from commencement of mediation, whichever is earlier.

Any issues to which agreement cannot be reached after 14 calendar days from the commencement of mediation with the FMCS mediator may be submitted by either or both parties to the FSIP.

- K. Memorializing Agreement: Agreements will generally be entitled Memoranda of Understanding (MOUs)/Memoranda of Agreement (MOAs). Upon agreement, the chief negotiator for each Party will electronically sign and date the MOU/MOA. The Parties will ensure both Parties have a copy of the fully signed final agreement.

1. All MOUs/MOAs signed by the parties and entered into during the life of the parties' MCBA will be considered an addendum to this agreement and subject to its duration unless otherwise agreed by the Parties.
  2. An electronic copy of all local MOUs/MOAs will be provided to Agency's LER Director and the AFGE Council 238 President or their designees.
  3. 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 pursuant to 5 U.S.C. 7131
1. The union negotiators will be allowed reasonable and necessary official time for midterm bargaining, including for attendance at related mediation and impasse proceedings. Such time will be administered in accordance with the Union Rights and Duties Article of this MCBA.
  2. Time for preparation, research, negotiations and bargaining for an issue subject to midterm bargaining will be up to eight hours per day for up to two union officials who are not already in a 100% official time status, unless otherwise requested by the Union and approved by the Agency. Such time will be administered in accordance with the Union Rights and Duties Article of this MCBA. The Parties further agree the use of subject matter experts (SME)s is beneficial for negotiations and related preparation such SMEs will participate on duty status.
- M. Impasse: Any bargaining impasse not resolved through the FMCS may be submitted by either party to the Federal Services Impasses Panel (FSIP).
- N. Observers.
1. For negotiations at the Local level, each party may have up to five (5) observers during each bargaining session. For negotiations at the national level, each party may have up to five (5) observers during each bargaining session.
  2. The parties will exchange a list of observers, including the date, the portion of the day the observer will attend, and association (e.g., EPA employee, AFGE members, or AFGE representative) by no later than one (1) hour prior to the beginning of the negotiations
  3. Observers are not entitled to official time and the agency will incur no costs due to observers.
  4. Observers may include only EPA employees, EPA retirees and AFGE representatives unless approved by both parties. All observers are obligated to

introduce themselves by name and position upon request or they may be removed from the meeting by either party.

5. Observers may only observe via Teams or in-person. If in-person observers are limited by available space, then observers may observe via a hybrid option (Teams). Observers will not participate directly in these negotiations, including talking or utilizing the chat feature in MS Teams.
6. No recordings of negotiations may be made by observers, negotiators, or notetakers.

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For the Agency  
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