

# ARTICLE 3

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## MID-TERM BARGAINING

### SECTION 1

This Article covers the negotiations that flow from changes in conditions of employment that affect employees in the bargaining unit and that, pursuant to applicable law, create a mandatory obligation to bargain.

The following provisions will guide the procedures for negotiating mid-term matters. The parties recognize that each has a responsibility to consider the other's issues and to make an honest attempt to find acceptable solutions. Except where specifically noted otherwise, Section 2 procedures govern both local and national mid-term matters.

### SECTION 2

When the Employer wishes to implement changes in personnel policies, practices and working conditions, the Employer will provide the Union advance notice of the proposed changes in conditions of employment.

#### A. Local

When the Employer notifies the Union of changes that are local rather than national in scope (as defined in § 2B1 below), this notice shall be served as follows:

1. When the proposed changes affect employees within a single Headquarters, Regional or District Office, such notice will be served on the appropriate chapter president and any subsequent negotiations will be done in the Headquarters, Regional Office or the District headquarters Office, absent agreement to do it at some other site;
2. When the proposed changes affect employees in Districts or offices within the jurisdiction of more than one chapter, but within only one Region, each chapter president will be served notice prior to negotiations. However, the Union will designate one principal representative to respond on its behalf.
3. Notices concerning a local change shall be provided at least twenty-one (21) calendar days in advance of the implementation of the proposed changes, taking into consideration the nature and scope of the proposed changes and the need for timely implementation.

#### B. National

1. When the Employer's proposed changes are national in nature, that is, they would take place in more than one Region (with Departmental and OPDIV Headquarters

being treated as Regions for this purpose), or more than one OpDiv, the notice shall be provided to the President of NTEU.

2. Notice of national changes shall be provided at least thirty (30) calendar days in advance of the proposed changes.
- C. Service may be by certified return receipt mail, e-mail, hand delivery or facsimile. If the Employer uses an electronic method of service; it will use at least two (2) methods of delivery to ensure receipt. Notices will contain a description of the change, the need for the change, the anticipated impact on the bargaining unit, information as to the appropriate contact person, and a proposed implementation date. Any relevant written material will also accompany the notice.
- D. Within five (5) work days of receiving the Employer's notice of proposed changes, the Union may also request to negotiate or request a briefing regarding the proposed changes. The Employer shall hold the briefing no later than fourteen (14) calendar days after the Union requests a briefing.
- E. Within ten (10) work days of submission of a request to negotiate, or the date of a briefing (whichever is later), the Union will submit its proposals. Reasonable extensions of time for submitting proposals will be granted.
- F. Unless the parties agree otherwise, negotiations over mid-term changes shall commence no later than fifteen (15) workdays after the parties' exchange of proposals.

### **SECTION 3 - Union Initiated Bargaining**

1. When the Union notifies the Employer of its intention to initiate mid-term bargaining, it shall serve notice on the appropriate management official designated by the Employer.
2. Service may be by certified return receipt mail, e-mail, or facsimile.
3. The parties shall follow the timeframes outlined above in Sections 2 A and B, depending on whether the Union-initiated change is local or national in scope.

### **SECTION 4**

The parties agree that the following ground rules will be incorporated into this Agreement.

At the beginning of bargaining, the Parties may notify the appropriate Federal Mediation and Conciliation Service (FMCS) office in each instance of an ongoing matter subject to this process.

Either Party has the right to request the assistance of an FMCS mediator at the appropriate FMCS office at any time during bargaining. It is understood that a Party will not request FMCS intervention unless it has a basis to believe that bilateral efforts between the Parties will not

result in an agreement in a timely manner. The requesting Party should notify the other Party of its intention to request FMCS assistance. The cost of the services of the mediator, if any, shall be shared equally by the parties.

A. Procedures Governing Negotiations

1. The Union is entitled to have four (4) bargaining unit members present and on the official team for national bargaining. For all other bargaining, the Union is entitled to have three (3) bargaining unit members present and on official time. There is no limit on the number of professional staff members on the Union team, generally not to exceed two NTEU staff members. A designee for each party may be appointed to serve as a Chief Negotiator. When possible, party changing negotiators will notify the other Chief Negotiator. The parties will avoid routine rotation of bargaining team members for midterm matters, to the extent practicable.

Either party may designate up to two (2) observers for each negotiating session.

2. By mutual agreement, the Parties may use alternatives to face-to-face meetings.
3. In accordance with 5 U.S.C. §71 and consistent with this Article and Article 10 of this Agreement, official time will be allotted to employees representing the Union at the bargaining table in the negotiating of a collective bargaining agreement. Observers will not be allowed official time during any of these proceedings.
4. Place of Negotiating Sessions. Local negotiations will be held at a site arranged for by the Employer. The Employer will also arrange for free parking for any employee representatives participating in bargaining who do not normally work at the bargaining site, where the Employer controls the parking and there is space available. For national negotiations, the parties shall provide a site for mid-term bargaining on an alternate basis (unless mutually agreed otherwise) when face-to-face negotiations are held.
5. Negotiations will be conducted at times and dates mutually agreed to by the parties.
6. Minutes. No official minutes of the proceedings of the negotiating sessions shall be made. However, each party shall be allowed to prepare unofficial minutes for its own use.
7. Authority. Each party shall be represented at the negotiations at all times by one duly authorized Chief Negotiator who is prepared and authorized to discuss and negotiate on matters subject to negotiations and to sign-off on agreements for their respective party.
8. Interim Agreement. During negotiations, the Chief Negotiator for each party will signify agreement on each section by initialing the agreed-upon section. The Chief Negotiator for each party will retain his/her copies and initial the other party's copy. This will not preclude the parties from reconsidering or revising any agreed upon section by mutual consent.
9. Caucuses. It is agreed that either party requesting a caucus will be provided a suitable site.

There is no limit on the number of caucuses that may be held, but each party will make every effort to restrict the number and length of caucuses.

10. Final Agreement. The agreement shall not be completed and finalized until all proposals have been disposed of by mutual consent. The agreement must be signed by both parties. Agreements negotiated pursuant to this article will be subject to Agency head approval pursuant to 5 USC § 7114(c). In the event of disapproval, the Union will have the option of renegotiating the entire midterm matter, provided the parties have not agreed otherwise, for example, by the inclusion of a severability provision. The option to renegotiate the entire midterm matter must be exercised by the Union by notice to the Employer within twenty-one (21) days of notice of disapproval. Any provisions disapproved by the Agency head review may be referred to the FLRA by the Union and any such provision held to be negotiable by the FLRA will be incorporated into the agreement.

In accordance with 5 U.S.C. Chapter 71, either party may initiate mid-term bargaining by proposing changes in conditions of employment. Within thirty (30) days of the effective date of this Agreement, the Employer will provide written notification to the Union of the appropriate management officials to whom midterm bargaining issues should be submitted. The Employer will promptly notify the Union of any changes to the list of designated officials.

11. Negotiability Issues. Issues as to whether a proposal is negotiable or not shall be resolved in accordance with 5 U.S.C. §7117(c).
12. The Union and the Employer will incorporate any agreement into a Memorandum of Understanding (MOU), and each party will sign the MOU.
13. Each MOU will contain a provision indicating an effective date and an expiration date. Any MOU will be subject to re-opening upon expiration or renewal of the national collective bargaining contract (this Agreement).

When mediation has been requested, the Parties will schedule a mediation session with the mediator as soon as practical, if appropriate. The Parties will make every attempt to hold any mediation sessions, telephonically or in person, as expeditiously as possible.

The mediation procedure described above shall not preclude the parties from agreeing on any issues or from entering into complete agreement without the assistance of the mediator. If the mediator declares the Parties at impasse, the Parties may, upon mutual agreement, jointly contact the designated mediator/advisory arbitrator who is next on the Arbitration panel under Article 46.

The Parties shall share equally the cost of any mediation/advisory arbitration proceedings. If the Parties cannot reach agreement and opt not to use the process outlined above, either party may request the services of the Federal Service Impasses Panel in accordance with 5 U.S.C. §7119. Neither Party waives any right to exercise any of its statutory rights and remedies such as unfair labor practices, negotiability appeals, nor Agency head review. By mutual consent, the parties may modify the ground rules contained in this Article.

If mutually agreed, on a case-by-case basis, the Parties may choose to proceed with implementation, subject to the Union's right to reopen no later than the last working day of the final week of the ninth full month after the date of notice. This period may be extended by mutual agreement. Nothing herein shall be deemed to waive the Union's right to file an unfair labor practice charge in the event that such implementation occurs without mutual agreement.

At all stages of the process, the Parties will communicate and bargain in a good faith effort to reach agreement in an expeditious manner.

## **SECTION 5**

Unless otherwise permitted by law, the Employer will not implement any changes until it has provided proper and timely notice to the Union and the parties have completed all negotiations, including any impasse proceedings. Nothing herein shall be deemed to waive the Employer's authority as provided by law to implement proposed changes in conditions of employment before the completion of bargaining. When the Employer initiates a change, it will provide all necessary relevant information to the Union at the time of the briefing that it has not already provided with the notice. If the Union makes a request for information during the briefing or before proposals are submitted that meets a particularized need with respect to the proposed change, all time frames will be tolled until the Employer provides the requested information.

## **SECTION 6 - TRAVEL**

- A. Local travel expenses within the commuting area will be paid by the Employer;
- B. The Union employee representatives involved in bargaining will be reimbursed for travel and per diem expenses as follows:

In national bargaining involving Department-wide changes, the Employer will pay all reasonable travel and per diem expenses for two (2) employee representatives or, if greater, the number equal to one-half the number of management representatives involved in the negotiations, including members of the Labor Relations staff.

## **SECTION 7**

If one party seeks to terminate an MOU (either local or national) or a past practice (either local or national and including those past practices that arose from an expired agreement), that is not inconsistent with this agreement, the party must, consistent with the Statute and this Article, provide specific notice to the other party of its intention to terminate the practice or agreement and bargain in accordance with law, rule and regulation. All agreements and past practices remain in effect until bargaining is completed, including impasse procedures. This provision notwithstanding, MOU's and past practices that are inconsistent with this Agreement are extinguished upon the effective date of this Agreement.

## **SECTION 8**

Neither party has an obligation to bargain over any matter that is specifically addressed by the provisions of this Agreement.

## **SECTION 9**

If the Employer reorganizes any of the covered operating divisions at any time during the life of this Agreement such that the new structure no longer aligns with this Article's definitions of local and national issues, the Union may at its sole option reopen this Article and bargain over that will constitute a local or national issue consistent with the new organization.