

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF DEFENSE EDUCATION
ACTIVITY
And

OVERSEAS FEDERATION OF TEACHERS

Case No. 20 FSIP 060

DECISION AND ORDER

BACKGROUND

This case was filed by the Department of Defense Education Activity - Europe South District (DoDEA or Agency), and concerns the negotiations of ground rules over the Successor Collective Bargaining Agreement (CBA) between the Agency and the Overseas Federation of Teachers (Union). DoDEA is the umbrella organization that unites efforts to provide quality educational opportunities and services to military dependents around the globe. DoDEA plans, directs, coordinates, and manages the education programs for Department of Defense (DoD) dependents who would otherwise not have access to a high-quality public education. DoDEA is primarily responsible for operating the DoD elementary and secondary school system, ensuring the students that attend DoDEA schools remain on track towards being ready for college or a career upon high school graduation. DoDEA also arranges and financially supports educational requirements for eligible dependents not able to attend a DoDEA school (overseas and in four U.S. locations). DoDEA operates 163 accredited schools in 8 districts located in 11 foreign countries, 7 states, Guam, and Puerto Rico (includes the DoDEA virtual school).

The bargaining unit to which this CBA is applicable includes all unit employees assigned to the DoDEA schools (a.k.a. DoDEA Europe South District) located in Portugal, Spain, Italy, Greece, Turkey, and Bahrain. The unit includes all nonsupervisory professional school-level personnel employees by the DoDEA schools, excluding all nonprofessional employees, substitute teachers, management officials, supervisors and employees excluded by statute. There are approximately 700 employees in the bargaining unit, all of whom reside abroad. The Union has no full-time staff and no local presence within the United States. They do occasionally receive assistance from their parent organization, the American Federation of Teachers (AFT), based in Washington, DC.

The parties are currently governed by a collective bargaining agreement (1994-CBA) that was enacted on June 23, 1994. The CBA expired June 23, 1997, but continues to roll over until the parties negotiate new terms.

BARGAINING HISTORY

On November 26, 2019, the Agency contacted the Union to provide notification of the Agency's reopening of the 1994-CBA. On December 5, 2019, the Agency provided its initial proposals regarding ground rules for negotiating the successor CBA. On December 10, 2019, the Union responded with a commitment to provide its initial proposals, along with an information request. On December 20, 2019, the Agency provided the information requested. On January 21, 2020, the Union provided its initial proposals regarding ground rules for negotiating the successor CBA. After several attempts to meet to conduct face-to-face bargaining, on February 6th, the Agency notified the Union that the Agency's proposals would be the Agency's last offer and the Agency intended to unilaterally implement its proposals on February 18, 2020. While the parties had not yet gone to mediation, on February 7, 2020, the Union protectively filed a request for FSIP assistance, seeking to bar the Agency from unilaterally implementing the ground rules. (FSIP Case No. 20030). The Panel determined that the parties were not yet at impasse and on March 12, 2020, the FSIP issued a letter declining jurisdiction over the ground rules.

The parties participated in several mediated bargaining sessions starting on March 16, 2020, and ending on June 10, 2020. On June 10, 2020, the parties were released by FMCS to seek the assistance of the FSIP to resolve the remaining 12

disputed proposals. On June 18, 2020, the Agency filed this request for assistance. On August 25, 2020, the Panel asserted jurisdiction over the remaining 12 provisions, except for one sentence in Sections 25 and 29¹. The Panel ordered the parties to a Written Submissions procedure. Both parties timely provided their responses.

12 ISSUES AT IMPASSE

- 7 TDY Authorization and Travel Expenses - Travel expenses for bargaining team members.
- 12 Preparation Time - Official Time to prepare for negotiations.
- 15 Negotiation Sessions and Times - Bargaining occurring during the school year vs. when school is out of session.
- 16 Timelines for Negotiations - The schedule for bargaining. Face-to-Face bargaining vs. Virtual.
- 22 Reaching Agreement - Reopening Tentative Agreement.
- 23 Negotiability - Severability of negotiability laced proposals.
- 24 Impasse - Presenting new proposals.
- 25 Ratification - Right to ratify what has been ordered by the Panel.
- 26 Agency Head Review - The right to renegotiate after disapproval on agency head review.
- 27 Effective Date of Completed Agreement - Severability of completed sections of the CBA.
- 28 Virtual Bargaining Logistics - Virtual bargaining.
- 29 Ground Rules Ratification & Enforcement- Ratification of these ground rules.

POSITIONS OF THE PARTIES AND PANEL DETERMINATION

- **Section 7 - TDY Authorization and Travel Expenses**

The parties have agreed upon language in section 11 of the ground rules, which is not before the Panel for adjudication,

¹ Panel asserted jurisdiction over the remaining 12 provisions, except for the one sentence in Sections 25 and 29 – “and provided there has been no order from the FSIP resolving remaining bargaining dispute(s)”. Regarding the one sentence in Sections 25 and 29, the Panel declined jurisdiction because the Agency’s language would require a waiver of the Union’ statutory right.

that provides for three rotating bargaining locations: DoDEA Europe South HQ in Vicenza, Italy; FMCS's offices in Washington, DC; and an online virtual location. Furthermore, the parties have both proposed bargaining periods of limited duration in their submissions for section 16 of these ground rules. The Agency is opposed to reimbursing the Union for any travel and per diem related to bargaining the successor CBA. The Agency argues that the taxpayers should not have to pay the cost of travel for the Union representatives to participate in bargaining the CBA. Additionally, the Agency argues that the Union has sufficient funds, according to their reported assets to Department of Labor², to bear the travel burden on its own. Finally, the Agency argues that their proposal should be adopted because the Agency is "prohibited" from providing reimbursement for Union travel under Executive Order 13837 (May 25, 2018). The Agency argues that the Executive Order prohibits the government from paying for union costs unless required by law. The weight of the Executive Order is currently being challenged before the FLRA. Additionally, the Agency has not declared the Union's proposal non-negotiable.

The Union has proposed that the Agency reimburse expenses for five bargaining team members for their international travel (which constitutes 1/3 of the bargaining rounds) and their intra Europe travel expenditures (which is 1/3 of the bargaining rounds) during a limited number of bargaining rounds. The Union is particularly concerned about the cost of travel to Washington, DC, a place of convenience for the Agency bargaining representatives (most are located in Alexandria, VA; most of the Union representatives reside in the Europe South District. The Union argues that because they are a small unit, it is not unreasonable for the Agency to assist the Union by reimbursing some of the expenses associated with the bargaining, particularly since the Agency is the party that opened the bargaining over the 25-year-old contract. The Union also argues that the Agency should pay for the Union's bargaining expenses to ensure equitable treatment with the other larger labor organization within DODEA, the Federal Education Association (FEA), which represents most of the other DODEA educators around the world (approximately 4000 bargaining unit employees).

The Panel orders the parties to adopt the Agency's proposal. The Agency presented evidence that the Union has

²In accordance with the Union's September 30, 2018, Department of Labor LM-2 filing, the Union had \$166,549 in cash assets and \$382,029 in net assets. The Agency requests the Panel take note that the American Federation of Teachers (OFT's parent organization) is one of the largest labor organizations in the country with \$148,475,835 reported on the FY2020 LM form. AFT FY2020 LM Form.

assets available to support travel associated with the bargaining. The Union did not refute the available assets, nor did they address why these assets weren't sufficient.

- **Section 12 - Preparation Time**

The Agency's proposal provides five (5) Union's representatives ten (10) workdays of leave without pay for negotiation preparations. The Agency argues that nothing in the labor statute or its legislative history requires the Agency to provide the Union representatives preparation time subsidized by taxpayers to prepare for bargaining. Additionally, the Agency notes that under the current CBA (which remains in effect until bargaining over the successor CBA is complete), Article 9, Section 3(b), the Union is entitled to two (2) full time representatives from the bargaining unit. Those representatives can work on contract preparation on a near full time basis on official time. Further, the Union representative for this contract matter is an ATF Attorney and the Union has also procured the services of an outside Council for these negotiations.

The Union's proposal allows for fourteen (14) workdays on official time (i.e., paid time). The Union argues that it is fair and reasonable to receive official time for the bargaining preparation. The Union argues that the paid official time is necessary to the Union's recruitment of a full bargaining team that can work on drafting proposals and other preparation. In light of the fact that the Union is preparing bargaining proposals for a whole new CBA for the first time in 25 years, it is literally starting its preparations from scratch. For this reason, the Union's position is that 14 workdays for preparation are necessary. Additionally, the Union submits that there is no provision in any Executive Order or OPM directive that would prohibit the use of official time for bargaining preparation.

The Panel orders the parties to adopt the Agency's proposal. The Union was put on notice of the Agency's intent to renegotiate the CBA on November 26, 2019. That was almost a year ago. Additionally, upon the execution of these ground rules, the parties will have 60 more days to submit their initial proposal. The parties have had a significant amount of time to begin the development of their initial proposals. The parties should not need an additional fourteen (14) days as the Union proposes. The Union provided no justification for official time beyond what is already provided for in the CBA.

- 15 - Negotiation Sessions and Times

The parties have agreed to the bargaining locations (Italy, Washington D.C., and virtual) but disagree on the time zone in which bargaining will take place for face-to-face bargaining sessions (virtual bargaining time zone is addressed in Section 29). The Agency proposes bargaining from 9:00 A.M. to 5:00 P.M. local time in the locations where bargaining takes place. But what is the most contentious issue in this section is the Agency's proposal that bargaining will take place Monday through Friday. This proposed schedule means bargaining will take place during times when school is in recess (e.g. winter break); non-work times for the bargaining unit educators. The Agency's proposal would result in the use of approximately three (3) months throughout the year when school would not otherwise be in session. The Agency notes that this proposal is consistent with the Panel's decision in 19 FSIP 001 (Department of Defense Education Activity and Federal Education Association) and 18 FSIP 075 (Department of Housing and Urban Development and AFGE Local 222).

The Union's proposal precludes the scheduling of negotiation sessions when school is not in session: the nine-week summer break, the two-week winter break, and the one-week spring break when members of the bargaining unit are on break. The members of this bargaining unit have a particular challenge to their availability. DoDEA teachers are United States nationals who agree to reside outside of the US in service to American military-connected families stationed abroad. These employees are granted Renewal Agreement Travel³ (RAT) at the end of their employment term. RAT is a significant benefit of their employment which permits them to return to their homes during the summer to be with their family before returning for their next tour. The Union argues that if bargaining were to take place during the summer, the ability of these employees to take their RAT would be severely restricted, if not eliminated, due to the bargaining schedule. Additionally, K-12 teachers typically use summer months to take courses that allow them to retain their certification to teach in schools, including the certification necessary to teach in DoDEA schools. Requiring DoDEA employees to bargain during the summer breaks will eliminate their ability to take courses.

³ Renewal Agreement Travel is round-trip travel from the overseas duty station to the United States. Authorization is based upon the employee's agreement to remain in the overseas area for an additional time frame immediately following the expiration of the initial tour. For more information, see <https://www.dla.mil/Careers/Programs/overseas/rnwlagrmntrvl3j.aspx>.

The Panel orders the parties to adopt the Union's proposal. Bargaining should not be scheduled when school is on a break, allowing the negotiation team members, for example, to take advantage of their limited opportunities to enjoy the benefit of returning to the US between tours (i.e., on RAT travel) or use short breaks outside of their classroom commitments to complete or improve their skills (e.g., work on their certifications).

- **Section 16 - Timelines for Negotiations**

The main issue to be decided by the Panel is the length of the bargaining period and the manner of its determination. There are several subsidiary issues, including: the specific "Monday" of the first day of bargaining; whether bargaining must take place only when schools are in session; the location for the first round of mediation; and the inclusion of a definition of "days" in the ground rules.

The Agency has proposed a timeframe that ties the length of the bargaining period to the number of open issues. The more articles the parties decide to open, the more time the parties will commit to bargaining. Each party may choose how many articles to open and the permissible period of bargaining may range from 10 weeks to 18 weeks, depending upon the combined number of open articles. Both parties must agree to extend bargaining past 18 weeks. The Agency's proposed approach was previously ordered by the Panel in 19 FSIP 001 (Department of Defense Education Activity and Federal Education Association) and 18 FSIP 075 (Department of Housing and Urban Development and AFGE Local 222). However, there is a critical distinction between this case and the previous cases. In this bargaining, the parties have also tentatively agreed to language in § 13(D) of the ground rules, which is not before the Panel for adjudication. §13(D) states, in its entirety:

Either Party may submit new proposals at any time from initial exchange through the conclusion of the second round of bargaining. However, after that point in time, bargaining will consist only of counter proposals, or modifications of existing proposals, unless both parties otherwise agree.

This section is intended to permit a party to raise new proposals, and consequently open additional articles of the CBA, up until the conclusion of the second round of bargaining. The

Union notes that if the Panel were to adopt the Agency's language, tying the length of the bargaining period to the number of open articles, there would be no way to know how long the bargaining period would be until the completion of the second round, which is a full 6 weeks after the start of bargaining.

In drafting its LBO in this section, the Union relied heavily on the Panel's decision in its recent case, *EPA, Region 4*, 20 FSIP 028 (May 21, 2020). The Union proposed a 6-month bargaining timeframe (compared to the Agency's 4-month timeframe), with the opportunity to extend the bargaining. The parties have agreed that the first day of bargaining shall take place at least 90 days after the effective date of the ground rules and bargaining shall begin on a Monday. The Union argues that the Agency's proposal could be interpreted to require bargaining to begin on any Monday within 90 days of the effective date, which is not what the parties intended. The Union argues that its language setting the first "Monday" of bargaining is more clearly drafted than the Agency's and better reflects the intent of the parties.

The Panel orders the parties to adopt the Agency's proposal, with modification to reflect the language imposed for Section 12 and the clarity provided by the Union's proposal for the start of bargaining. Given the parties extensive bargaining, starts and stops, and missteps, it would be helpful to have a discrete schedule that can be extended by mutual consent. Also, the parties should be guided by the FMCS in its procedures for assisting the parties.

Panel Ordered modifications to the Agency proposal:

- o Bargaining shall begin the Monday 90 days after these ground rules become effective (but not to be scheduled during a break). Once the bargaining begins, up to a 10-week bargaining period will occur,...
- o The Union is authorized to have up to six (6) bargaining unit negotiation team members, designated by the Union under Section 3 above, on official time during mediation efforts sessions. The location of the mediation sessions will be at the direction of the FMCS mediator.

- **22 - Reaching Agreement**

The primary remaining issue in Section 22 is whether a party may reopen a tentatively agreed-upon section or subsection before agreement has been reached on the entire article. The Agency proposes that when the parties reach a tentative agreement on any section or sub-section of an Article or Appendix, the parties will initial that portion that is tentatively agreed upon and those tentatively agreed upon sections can only be re-opened by mutual consent of both parties. The Agency argues that this promotes efficient bargaining. The Union proposes a provision that the Agency had proposed throughout bargaining but later abandoned. The Union proposed that while agreement may be reached on sub-components of an article, the tentative agreement of that sub-part, does not preclude further discussions for good cause, while the rest of the article is still open. Under the Union's proposal, bargaining would be closed when agreement is reached on all of the issues in the article.

The Panel orders the parties to adopt the Agency's proposal. The parties are not precluded from further discussions of an agreed upon section by mutual consent.

- **23 - Negotiability**

The outstanding provision addresses the severability of negotiability-laced proposals from bargaining. The Agency's proposal establishes that if the Agency declares a proposal/counter-proposal or any part of a proposal non-negotiable, and the Union files a negotiability appeal with the FLRA, the parties will continue bargaining the rest of the CBA while the negotiability dispute is resolved. The Agency argues that their proposal provides for an orderly, expeditious manner of handling negotiability issues. While it is not clear how the proposal will facilitate the processing of the negotiability appeal (that process belongs to the FLRA), it certainly provides that the parties will keep moving forward with bargaining over matters still on the table.

The Union's position is that its proposal is more clearly drafted than the Agency's and sets forth an orderly process to deal with negotiability disputes. The Union argues that the Agency's proposal provides no guidance to the parties concerning what happens if agreement is reached on all remaining issues and a negotiability appeal is pending. The Union's proposal is

drafted to provide an easy-to-follow framework for negotiators to handle matters once an issue of negotiability arises. Under the Union's proposal, each party is permitted to exercise its rights under the Statute by filing a negotiability appeal with the FLRA, the permissive subject of severability is not imposed upon the Union (i.e., the agreement is not submitted for ratification or submitted for agency head review until all duty to bargaining issues are resolved), and the parties continue to bargain the remaining issues. The Agency opposed the Union's language because it doesn't include the statutory requirement that the Union request a declaration of negotiability.

The Panel orders the parties to adopt the Agency's proposal with modification to make it clear that while the parties will continue to bargain the provisions that are not the subject of a negotiability appeal, the remaining bargaining does not sever those matters for the purpose of ratification and agency head review.

Panel Ordered Modification of Agency proposal:

If DoDEA declares a proposal/counterproposal The Parties will attempt to reach agreement on all other provisions in that Article and on other Articles. While the parties will continue to bargain the provisions that are not the subject of a negotiability, the remaining bargaining does not sever those matters for the purpose of ratification and agency head review.

Within 14 days of receipt of a determination by the FLRA that a matter proposed for negotiations is within the duty to bargain, either party may initiate negotiations on the matter, except when either party makes a timely written request for judicial review of the FLRA's decision in accordance with the Statute.

• 24 - Impasse

The Agency's proposal provides that if the parties don't reach full agreement through engaging with FMCS, either party may request the assistance of FSIP; the Statute will be followed. The Union's proposal provides a framework to guide the parties should impasse arise. The Union's proposal provides that the parties will table items where they cannot reach agreement until the end of bargaining. Then the parties' language is essentially the same in terms of seeking the

services of FMCS or FSIP. The Union's proposal then goes on to provide that either party can present a new proposal at any stage, including during impasse procedures. Such a procedure could cause the parties to restart bargaining on issues. Additionally, a change in proposals could cause a *POPA*⁴-problem during the impasse procedures. The Panel orders the parties to adopt the Agency's proposal, which follows the Statute.

• 25 - Ratification (of the Successor CBA) -

The first difference between the parties' proposals is over when the Union ratification process must take place, if the Union chooses ratification. Under the Agency's calendar-driven approach, if the Union elects to send the tentative agreement to ratification, the Agency's proposal provides for the results of the ratification vote to be transmitted to the Agency within 40 days after the parties reach tentative agreement on the provisions that the parties were able to reach agreement. The Agency's proposal acknowledges that the Union's bylaws gives the Union 40 days to ratify the agreement. Under the Agency's proposal, matters that are not tentatively agreed to (matters at impasse), will proceed down a separate path up through the FSIP process. If a ratification vote on the tentative agreement result is not timely transmitted to the Agency by the Union, the tentative agreement will be deemed to have been ratified. If the agreement is either ratified or deemed ratified, the parties will sign the tentative agreement within 45 days after reaching tentative agreement on the successor CBA. At that point, the Agency would consider the agreement on the provisions where the parties mutually agreed to be deemed executed and the Agency will thereafter submit the executed agreement to 30 day-Agency Head Review⁵, without regard to the status of those matters where the parties reached impasse. The remaining matters at impasse⁶ would be subject to 30-day review after the Panel order is issued.

The Union has proposed to conduct the vote after the parties reach tentative agreement on all provisions or after the FSIP issues a final decision on provisions at impasse. The Union would then consider the agreement on all of the provisions, both

⁴ *POPA vs FLRA*, 26 F3d 1148 (D.C. Cir 1994).

⁵ 7114 (c)(2) - The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision). For purposes of § 7114(c), the date an agreement is executed is the no further action on that agreement is required.

⁶ The Agency's proposal does not address those provisions that are mutually agreed to during the impasse process.

where the parties mutually agreed and where the Panel imposes language, for ratification vote. The Union argues that the Agency's process would require the Union's membership to vote on an incomplete agreement. The Union's proposal would ensure that the entire agreement is under consideration by the membership when they conduct their ratification vote. The concern with the Union's proposal is that the entire agreement, both agreed upon provisions and FSIP-ordered language, would then be subject to the 30 day-Agency Head Review, and would be final and binding upon the parties after 30 days. With the Union's ratification period of 40 days, the ratification process may not be complete before the contract is final and binding after the 30 day-Agency Review period, creating a conflict.

There is ambiguity in the law regarding the entitlement for the membership to vote on the contract and when that must occur. In *Dep't of Defense Education Activity and Federal Education Assn*, 19 FSIP 001 (2019), the Panel was asked to resolve an impasse over ground rules that included the same Agency proposal: "Provisions included in the agreement by Order of the FSIP are not subject to ratification by Association members." The Panel noted there was an Administrative Law Judge decision that found that FSIP-imposed provisions were not subject to ratification. The Panel noted that "its precedential value is questionable"⁷ because the ALJ decision was not adopted by the Authority. In FSIP Case No. 19001, the Panel chose not to adopt the Agency's proposal regarding the ratification of FSIP-imposed language. There continues to be concern about how the Union membership's right to ratification may run afoul of the Panel authority to issue final and binding language under Section 7119 (c) (5) (C)⁸. The Authority has previously held that "there is no statutory restriction on the scope of bargaining available to a union following the membership's ratification of a tentative contract." *Dep't. of the Air Force, Griffiss Air Force Base*, 25 FLRA 579, 592 (1987). This includes the right to ratify terms imposed by the Panel, notwithstanding § 7119(c) (5).

In this case, the Agency has taken the position that FSIP-imposed language cannot be overturned by the membership and, therefore, there is no need to wait for contract review by the membership until that FSIP-imposed language is available in order to conduct ratification. That delay in conducting

⁷ ALJ decisions that are not appealed to the full Authority have no precedential significance. 5 C.F.R. § 2423.41(a); *Nat'l. Treasury Empls. Union*, 64 FLRA 462, 464 n. 3 (2010).

⁸ 7119(c)(5)(C)- Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

ratification could cause a conflict with Agency Head Review of the full agreement. The Union has taken the position that adopting the Agency's proposal would effectively deny the Union's membership the ability to know the full terms of the CBA when casting their ratification vote. Because the law is not clear, the Panel does not take a position regarding the entitlement to ratify and its effect on language imposed by the Panel. There should be no restriction imposed on the ratification process, and there can be no restriction on the Agency Head Review process. Should a conflict arise in the timing of those two statutory procedures, the parties can address that conflict with the Authority.

The other substantive difference between the two parties' proposals involves the length of time the parties would spend in renegotiations following a failed ratification. The Agency offers that if the Union timely notifies the Agency that the tentative agreement failed the ratification vote, the Agency's proposal provides for a limited time frame for renegotiations - complete renegotiations within 15 calendar days after the failed ratification vote. If agreement is not reached after the 15-day time frame for renegotiations, the matter will be submitted to FMCS and FSIP. The Agency argues that the discrete calendar-based timeframe is effective and efficient. The Union offers to commence such renegotiations within 15 days, while the Agency has proposed that the parties must enter into and complete negotiations within 15 days.

As discussed, the Agency's negotiations team is in Alexandria, VA and the Union's team is located throughout the Europe South Division. Neither party discussed the logistics of these renegotiations, but time must be provided for preparation and reconvening. Fifteen (15) days to prepare, convene and complete negotiations on potentially the full contract doesn't seem reasonable. This is particularly problematic when there is no way to know whether the issues will be few and minor and easily resolved, or whether they will be numerous. The Panel orders the parties adopt language that provides that negotiations will commence within 15 days after notification of ratification failure. Either parties would be free to invoke the services of FMCS as they see fit.

Panel Ordered language:

If OFT elects to submit the final tentatively agreed upon proposals for ratification, OFT will notify DoDEA. The results of the ratification process shall be reported to

the DoDEA designated POC by email within 40 days after reaching final tentative agreement on the proposals. If OFT timely notifies DoDEA that the final tentative agreement failed ratification, the parties will enter into renegotiations within 15 calendar days after ratification failure notification, unless an alternate timeline is mutually agreed upon by the parties. If OFT does not notify DoDEA of the results of the ratification process within 40 days after reaching final tentative agreement on the proposals, the final tentative agreement on the proposals shall be considered ratified.

- **26 - Agency Head Review**

In accordance with 5 U.S.C. 7114(c), from execution of the agreement, the Agency is to conduct an Agency Head Review in accordance with 5 U.S.C. 7114 (c). The Union has the right under the Statute to challenge a denial of the agreement on Agency Head Review by either filing a negotiability appeal with the FLRA or they have the right to renegotiate all or any part of the agreement that has been disapproved.

The Agency has proposed that if the Union seeks to return to bargaining, the Union will notify the Agency within fifteen (15) days after the receipt of the results of the Agency Head Review. The Agency proposes that the parties will enter into and complete all renegotiations within thirty (30) days after notification of disapproval through the Agency Head Review process. Similar to the above, the Panel orders the parties to adopt language providing negotiations will commence within 15 days after the Union provides notice of the desire to renegotiate. Either party would be free to invoke the services of FMCS as they see fit.

Panel Ordered language:

The Agency Head will have thirty (30) days, in accordance with 5 U.S.C. 7114(c), from the execution of the agreement in which to review the proposed agreement. The union may, as is its right under the Statute, file a negotiability appeal and/or renegotiate all or any part of the agreement that has been disapproved.

If bargaining is chosen, the moving party must notify the other party's designated POC by email within fifteen (15) days after the receipt of the results of the Agency Head

Review. The parties will enter into renegotiations within fifteen (15) calendar days after notification of disapproval through the Agency Head Review process. The renegotiations will take place at the next location in the rotation agreed to in section 11b above unless otherwise agreed by the parties. If a complete agreement is reached, it will be signed by the parties within five (5) days and thereafter submitted for Agency Head Review.

- **27 - Effective Date of Completed Agreement**

The Agency's proposal simply states that the effective date of the contract will be dictated by the Statute. This language allows for the full application of case law that dictates the effective date of the agreement. The Union's proposal provides that the effective date of the Agreement will be established upon mutual agreement (and after all negotiability appeals are resolved, ratification is complete, and Agency Head Review is complete). While not in its proposal, the Union goes on to argue that the new CBA should not become effective in the middle of the school term. Their language allows the parties to later negotiate an effective date of the CBA. The Panel orders the parties to adopt the Agency's language that reflects that the CBA becomes effective as defined by Statute. This proposal brings closure to the negotiations over the effective date of this successor CBA.

- **28 - Virtual Bargaining Logistics**

The parties have agreed to use virtual bargaining for at least a third of their bargaining. The challenges that are presented include the virtual software platform that will be used and the time that bargaining will be conducted. As for the virtual software platform, the Agency has proposed to use the FMCS Ring Central Platform. The Union has proposed to use the DoDEA's Cisco platform. The use of the FMCS system would require the engagement of the third party, FMCS, for coordination and facilitation throughout their 4 months, or more, of bargaining, mediation and renegotiations, if necessary. The Panel orders the parties to adopt language committing to utilize the system that is under their own control; the DoDEA Cisco platform.

The parties disagree over the starting and stop time of bargaining. The Agency has proposed that the starting and stop time would be the same as in-person bargaining; 9 AM to 5 PM

EST. The problem is, as mentioned, the Agency team is in Virginia and the Union team is in Europe; they are not in the same room or even in the same time zone. A 9 AM start time for the Agency's bargaining team would mean a 3 PM or 4 PM start time for Union's bargaining team members located in Vicenza or in Bahrain, respectively. But most concerning, a 5 PM stop time for Agency's bargaining team members would mean a 11 PM or 12 midnight stop time for Union's bargaining team members located in Vicenza or in Bahrain, respectively. The Union proposes to conduct bargaining from 6 AM to 2 PM EST, to accommodate for the time differences between the two bargaining locations. The Panel orders the parties to adopt the Union's more flexible proposal.

Panel Ordered Language:

This section shall apply to all bargaining, renegotiation, and mediation sessions that are held virtually.

- A. The parties will use the DoDEA's Cisco VTC system for virtual bargaining.
- B. Each side shall be obligated to disclose any participants in the proceedings to the other side, including participants who may be in the room but off camera.
- C. Each daily virtual negotiation session will begin at 6:00 AM Eastern Time and conclude for the day at 2:00 PM Eastern Time.
- D. Tentatively agreed-upon articles shall be exchanged via e-mail for signature and dating purposes.
- E. If one of more members of a party's bargaining team is experiencing technical difficulties with the VTC software or internet connectivity, reasonable efforts shall be made to rectify the problem(s). If, in the estimation of a party's POC, reasonable efforts have been made to no avail, the party or parties experiencing the technical problem(s) will participate in the session by telephone.

- **29 - Ratification of Ground Rules**

The parties' proposed provisions in this section mirror their proposals in Section 25, but applies to the ratification procedures should the Union decide to subject this ground rule

agreement to ratification. The parties' arguments are the same. Additionally, the Union argues that adoption of the Agency's proposal would retroactively strip the Union of its right to ratify those provisions that the parties have already tentatively agreed to in this ground rules negotiation, because they would have only had 40 days to conduct that ratification vote, and that time has already passed. The Panel orders the parties to adopt language that follows the same ratification procedures ordered in Section 25 for the ratification of these ground rules, however, the timeframe for the review of the tentative agreements will begin on the decision date for this Panel decision.

ORDER

Pursuant to the authority vested in the Federal Service Impasses Panel under 5 U.S.C. §7119, the Panel hereby orders the parties to adopt the provisions as discussed above.



Mark A. Carter
FSIP Chairman

November 17, 2020
Washington, D.C.