

## **Negotiations for Basic Watch Schedule and Leave Bidding**

Hello NWP Reps and Members;

Welcome to LR Chronicles number 21. Considering the fact that all of our facilities are about to begin their local negotiations for the Basic Watch Schedule (BWS) and Leave MOUs, I wanted to get this edition out as soon as I could. This edition will cover some very basic principles of negotiations as well as guidance that you should use in your negotiations. Bargaining is a very complex and extensive subject with many nuances. Therefore, this edition of the LR Chronicles will be a very abbreviated and basic look at negotiations, specifically tailored to your upcoming BWS and Leave negotiations.

To begin, you need to be familiar with the law and collective bargaining agreement (CBA) regarding bargaining and negotiations. I strongly suggest that you read and become familiar with the following provisions:

- Article 7 of the CBA;
- Article 24 of the CBA;
- Article 32 of the CBA;
- Article 34 of the CBA;
- 5 USC 7103(a)(14);
- 5 USC 7106(a) and especially (b);
- 5 USC 7114(b) and (c);
- 5 USC 7116(a)(5) and (6);

By reading and having a basic understanding of these very important provisions, it will give you a good place to start the negotiating process. Additionally, there is a template of a BWS and Leave MOU on the Grievance Automated Tracking System (GATS) along with guidance that outlines possible impasse scenarios. I

would suggest that you print these out and tailor them to your own facility.

Another document that I would suggest that you read is entitled “Basic Principles of Negotiability for use in Local Bargaining.” It is a 4-part series that was written by our National Office Labor Relations Department and will also assist you in your local negotiations. It can be found on the members’ only section of our NATCA National Website. This series goes into more depth than I will have time to discuss in this edition of the LR Chronicles. This series can be found here <http://www.natca.org/laborrelations/KnowYourRights.msp>

There are three (3) subjects within the scope of bargaining that the agency will or will not be obligated to bargain. These subjects are all contained in the federal law that I cited above. These subjects are ***prohibited, permissive, and mandatory*** subjects of bargaining.

### **Prohibited Subjects of Bargaining:**

These subjects of bargaining are contained in 5 USC 7106(a), which states:

***(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency-***

***(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and***

***(2) in accordance with applicable laws-***

- (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or to take other disciplinary action against such employees;**
  
- (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the agency's operations shall be conducted;**
  
- (C) with respect to filling positions, to make selections for appointments from-**
  - (i) among properly ranked and certified candidates for promotions; or**
  
  - (ii) any other appropriate source; and**
  
- (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.**

As these areas are classified as prohibited subjects of bargaining, management cannot negotiate the **substance** of any of these rights. However, there is still a great deal that can be done through the

negotiation of procedures and appropriate arrangements, which are discussed below.

### **Permissive Subjects of Bargaining:**

These subjects of bargaining are contained in 5 USC 7106(b)(1), which states:

***(b) Nothing in this section shall preclude any agency and any labor organization from negotiating-***

***(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;***

Management cannot be forced to negotiate the **substance** of any of these rights. However, if they choose to, they may. There was a time where they were forced to bargain the substance of these rights via an Executive Order that was signed by President Clinton. However, that Executive Order no longer is in effect as it was repealed by President Bush shortly after he took office in 2001.

### **Mandatory Subjects of Bargaining:**

These subjects of bargaining are contained in 5 USC 7106(b)(2) and (b)(3), which states:

***(b) Nothing in this section shall preclude any agency and any labor organization from negotiating-***

- (2) ***procedures which management officials of the agency will observe in exercising any authority under this section; or***
- (3) ***appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.***

As the name of the subject implies, the agency MUST negotiate these subjects with you regardless of whether or not they fall under the category of Prohibited or Permissive. However, there are limitations on these mandatory subjects. Those limitations are:

- It must meet the definition of a “condition of employment” as stated in 5 USC 7103(a)(14) and Article 7, Section 1 of the CBA;
- The subject matter of negotiations must be deemed “more than de minimis” by an appropriate authority.

De Minimis is a Latin term that means “trifling”, “minimal”, insignificant”.

If there are any question/concerns regarding what may or may not be considered *de minimis* by the FLRA, please contact Ham or Mike.

5 USC 7106(b)(2) “Procedures” and 5 USC 7106(b)(3) “Appropriate Arrangements” may sound more familiar to you as “Impact and Implementation” bargaining. There is a lot of FLRA case law on what constitutes a “Procedure” and an “Appropriate Arrangement”. Some of what they have ruled on is outlined below:

**Procedures (5 USC 7106(b)(2)):**

A proposal may be deemed a procedure if:

- It does not **directly** interfere with the exercise of a management right;
- Is not **covered-by** the existing collective bargaining agreement;
- Is more than “**de Minimis**”;
- Must be tailored to how management rights are exercised (implemented), without **directly** interfering with those rights.

### **Appropriate Arrangements (5 USC 7106(b)(3)):**

A proposal may be deemed an appropriate arrangement if:

- It mitigates the adverse affects flowing from the exercise of a management right;
- It does not **excessively** interfere with the exercise of a management right;
- Is not **covered-by** the existing collective bargaining agreement;
- It is tailored to benefit only those employees that may suffer an adverse affect by the exercise of a management right;
- It is not based merely on speculation that an employee may suffer an adverse affect;
- Cannot use terms such as “fair and equitable” with regard to the application of the agency’s policies;
- Can use terms such as “fair and consistent” with regard to the application of the agency’s policies;
- These adverse affects must outweigh the burden placed on management and their rights;
- The proposal does not conflict with Government-wide regulations;
- It does not prevent management from acting at all to exercise a management right.

Now that we have covered the law as it pertains to negotiations, I will now give you some suggestions on what should be negotiated on behalf of your local bargaining unit with respect to the BWS and Leave.

### **Article 32/Article 34 – Basic Watch Schedule Negotiations:**

In accordance with the CBA, there is a strict definition of “Basic Watch Schedule.” You need to tailor your proposals with this definition in mind. Any proposal from you or management that does not meet this definition may be considered a violation of the CBA. Below are some suggestions on what you should and should not consider in the negotiations for your BWS MOU. Please keep in mind that both the Union and the agency have certain rights under the law and CBA.

Negotiate the following on behalf of your local bargaining unit:

- Flexible shift start times;
- Maxiflex and Compressed AWS schedules for non-24 hour facilities;
- Flexible AWS schedules for all facilities; (Except do not negotiate Maxiflex and/or Compressed work schedules for facilities that operate 24 hours per day)
- Earning of credit hour time bands;
- Permanent and/or rotating days off;
- Rotation of shifts;
- Procedures for employees bidding to the watch schedule;
- Via seniority or some other means;
- Specific hours of the day for each shift;
- Changes in regular days off;
- A procedure for a developmental or CPC-in training to be added to the BWS after certification;
- An employee not present (leave, etc.), during bidding;
- New employees entering your facility after the bidding process begins;

- When and how will employees be notified when it is their turn to bid;
- How long in advance is the notification;
- How long an employee has to submit their bid;
- An employee should ONLY bid while they are in a duty status.

### **Article 24 – Leave Negotiations:**

When negotiating your Leave MOU, please keep in mind that in accordance with the CBA, an employee has a right to bid or use all annual leave that they are entitled to earn within the leave year as well as use all accumulated leave, at any time during the year, unless requirements dictate otherwise. Below are some suggestions for negotiations on the Leave MOU. Again, the Union, as well as the agency, has certain rights as explained above.

Negotiate the following on behalf of your local bargaining unit:

- Procedures for employees bidding and requesting annual leave; (such as rounds);
- How many rounds will be contained in the bidding process;
- How leave requests will be recorded (i.e. SF-71);
- When leave bidding begins and ends;
- Via seniority or some other means;
- An employee not present (leave, etc.), during bidding;
- When and how will employees be notified when it is their turn to bid;
- An employee not present (RDO, leave
- How long in advance is the notification;
- How long an employee has to submit their bid;
- An employee should ONLY bid while they are in a duty status;
- New employees entering your facility after the bidding process begins;

### **Negotiations for our Staff Specialist bargaining unit:**

If you are the FACREP of a facility to which Staff Specialists are assigned, you need to be aware of the following:

- Staff Specialists are not covered by our CBA;
- They are covered by an interim CBA that is an MOU;
- Always consult with them as to their wishes when negotiating on their behalf;
- Only negotiate in accordance with the “interim CBA”, which can be found on the NATCA National website;
- Consider delegating the negotiations to the Staff Specialist Area Representative and notify management of this delegation.

### **Negotiations for Traffic Management Coordinators (TMCs):**

If you are the FACREP of a facility to which TMCs are assigned, then you need to be aware that in accordance with the agency structure, TMCs are not under the auspices of Air Traffic. They are under the auspices of System Operations. As a result, the Air Traffic Manager (ATM), or their designee, will not be authorized to negotiate with you. Only the facility level System Operations management official will be authorized to negotiate with you or your designee. Normally this management official is the Traffic Management Officer (TMO). Please do not be alarmed about this difference in structure as this is no big deal. I suggest the following with regard to negotiating with System Operations management on behalf of the TMCs:

- Follow the guidelines and suggestions above when negotiating on behalf of the TMCs as they are covered under the CBA;
- Always consult with the TMCs and/or their elected/appointed Area representative when negotiating on their behalf;
- Consider delegating the negotiations to the TMC Area Representative and notify management of this delegation.

## **Agency Head Review:**

This is covered in law at 5 USC 7114(c). As per this law, the Agency has an obligation to have an “agreement” reviewed by the head of the agency. The purpose of Agency Head Review is to ensure that all agreements are in compliance with law and the mission of the Agency. However, the agency often misapplies this portion of law. The management official whom with you are negotiating may tell you something like *“this MOU looks good to me. However, I am exercising my right to agency head review. Therefore, I am going to send it up for review and if they say it is good to go, then you and I can sign it.”* This is a complete misapplication of agency head review. As per 5 USC 7114(c)(2), **“The head of the agency shall approve the agreement within 30 days from the date the agreement is executed...”** The word execute or executed means “to make valid by signing.” Therefore, unless that MOU is actually signed by both Parties, that document does not go up for agency head review.

Additionally, as per 5 USC 7114(c)(2), the head of the agency has 30 days to approve or disapprove the agreement. This is not an opportunity for buyer's remorse; the review is meant to review the legality of the agreement, not the wisdom of the local negotiator. If no action is taken in that 30 day time frame, then the agreement becomes final and binding on both parties. Should Agency Head Review result in an alleged defect in the agreement, the Parties can either remedy the defect or view the Agency's assertions as a declaration of non-negotiability. If this happens, contact you Ham or Mike immediately as there are strict timeliness to follow.

I now want to give you a few final thoughts regarding negotiations on BWS, Leave, or any other negotiations that you may conduct.

Please use the templates that are on the GATS. They are there to guide and assist you throughout your negotiations. They were written by the LR and Training Departments at NATCA National and

they have done a fantastic job in providing you a wide range of possibilities for your own MOUs. When using them, please remember that they were completed for generalities. You will have to use it as a guide and tailor it to your own facility.

When you prepare for your negotiations, it is a good idea to make a list of core objectives that you would like to accomplish for your bargaining unit. Then make a separate list of things that would be nice to achieve, but are not critical. Be sure and include all of these items in your proposal to management. You will need to leave yourself room to maneuver while conducting your negotiations. Negotiations are both a give and take proposition and you need to demonstrate that there are some things that you would like, but are willing to make some concessions on. This will assist you in protecting your core goals. Additionally, you need to approach these negotiations with a mind set that you are not only negotiating for next year's agreements, but are setting the table for the negotiations that will happen the following year. In this way, your agreement becomes a living document that you can seek to incrementally build upon with each successive set of negotiations. You won't get the entire cake the first time, take the slices that you can achieve and then come back for more!

Most importantly, I want you to know that you are not alone in these negotiations. If you are a brand new FACREP/VP, or even if you are a seasoned FACREP/VP, you have the full force of NATCA behind you. We have a very wonderful Regional LR Team and a fantastic RVP. We will always be there to assist you in any way that you need. We also have a very good LR Department at the NATCA National Office. All it takes is a phone call or an email to ask a question, ask for help, ask for guidance or anything else that you need. We are here to assist you in every way. We also have many methods of communication available to us such as phone calls, emails, fax, and we can even convene a telcon with about an hour notice (depending on the time of day) if that is what you need.

If there are any questions or concerns, please do not hesitate to make a phone call or send an email.

Mike Hull  
NWP LR Lead