

The Collective
Bargaining Process
In-Depth
Part 7

Local Negotiations regarding
Basic Watch Schedule
And Annual Leave

Hello NWP Members and Reps;

Welcome to LR Chronicles number 37. In the previous eight editions of the LR Chronicles, an in-depth explanation was provided regarding the collective bargaining process in the federal sector. Hopefully, based on those editions, you now have the information necessary to assist you in every facet of your local level negotiations. Once again, if you have any questions concerning any portion of the collective bargaining process, it is imperative that you contact your RVP or regional LR Lead for appropriate assistance and guidance.

Now that you have the in-depth explanation of the technical portion of the process, it is now time to put that to use as you prepare for, and actually conduct, your local negotiations regarding these very important matters. This edition of the LR Chronicles will explain local level bargaining as it specifically relates to basic watch schedule and annual leave negotiations. I will explain the different issues that you should consider when negotiating. I will also explain the differences in negotiating these matters among the different bargaining units that you may represent at your facility. Lastly, I will cite some very important case law issued by the FLRA, specifically related to watch schedules and annual leave.

Please remember that the obligation to negotiate locally over the basic watch schedule and annual leave is a mandatory “contractual” obligation to bargain, rather than a “statutory” obligation. Thus, the Parties agreed during the course of term negotiations to conduct the local basic watch schedule and annual leave negotiations. In doing so, NATCA and the FAA agreed to the scope of what must be negotiated; this contractual language serves as a roadmap for the local negotiations. Any negotiations concerning the procedures to be used and/or followed, in relation to the basic watch schedule and annual leave, fall beyond the previously-discussed covered-by doctrine. Because the Parties agreed to locally negotiate the basic watch schedule and annual leave, it is inappropriate for the FAA to assert that a “procedure” or “method” regarding the basic watch schedule or annual leave is “covered-by” the CBA, or in their case, the white book. Should the agency attempt to do so in your negotiations, you should immediately contact your RVP or regional LR Lead.

It is very important for you to know that what you agree to in your local level bargaining cannot “increase or diminish” any entitlement that is contained within the CBA. This requirement is stated in both the CBA (Article 7, Section 5), as well as the FAA’s ICE (Article 7, Section 2). Therefore, when conducting your negotiations, please keep this in mind. If there is ever any

doubt that any proposal for which you are negotiating may increase or diminish a provision in the CBA, it is best to contact your RVP or regional LR Lead.

Article 32/Article 34 – Basic Watch Schedule Negotiations:

In accordance with the CBA, there is a strict definition of what constitutes the “basic watch schedule.” This same definition is also contained within the agency’s ICE with one minor change. When conducting your local negotiations for the basic watch schedule, you must tailor your proposals to meet this definition. Once again, local level agreements may NOT increase or diminish any entitlement in the CBA.

When preparing your proposals and in actual negotiations, please consider the following issues:

- Flexible shift start times;
- Maxi flex and compressed AWS schedules for non-24 hour facilities; (See LR Chronicles number 30)
- Flexible AWS schedules for all facilities; (See LR Chronicles number 30)
- Permanent and/or rotating days off;
- Rotation of shifts;
- Procedures for employees bidding to the watch schedule, including:
 - Via seniority or other means;
 - Developmental/CPC-IT to be added to the watch schedule after becoming CPC;
 - Employees not present (leave, detail, etc.) during the bidding process;
 - New/transferring employees entering your facility after the bidding process begins or is completed;
 - When and how employees will be notified when it is their turn to bid;
 - How far in advance is said notification;
 - How long an employee has to submit their bid;
 - Bidding to the watch schedule on duty time (a BUE should **NEVER** be required to bid on their own time);
- Specific hours of the day for each shift;
- Regular days off and/or changes thereto;
- Supervisors to bid their basic watch schedule PRIOR to BUEs bidding (See LR Chronicles number 33);

One last thought regarding your basic watch schedule negotiations. At some facilities, I have heard that management will just assign a developmental or a CPC-IT to the watch schedule at their whim, instead of allowing them to bid in rotation and/or according to seniority or some other means. According to the information that I have received, this is done by management under the auspices of “training” and management’s alleged right to determine training, as their right to assign work. This should not happen due to the fact that in both the CBA AND the white book, the language pertaining to the basic watch schedule describes which individuals are to be addressed by the negotiations and the schedule itself; it addresses ALL employees that fall under the CBA and the white book. In accordance with Article 32, Section 2 of the CBA; *“Procedures for employees bidding and assignment to the basic watch schedule shall be negotiated by the Union and the Agency at the local level.”* In accordance with Article 32, Section 2 of the ICE;

“Procedures for employees bidding on the basic watch schedule shall be negotiated by the Union and the Agency at the local level.” Nowhere in either of these provisions does it state anything about developmentals or CPC-ITs being treated differently than CPCs. The operative word in BOTH provisions is “employees.” For management to just “assign” developmentals and/or CPC-ITs to the watch schedule is contrary to what was contemplated by the negotiated language. Such action, on the part of the Agency, is a diminishment of what is contained within the CBA.

Below is some very relevant case law regarding watch schedule negotiations:

- Hours of work constitute a condition of employment. (50 FLRA 140)
- A change in starting and/or quitting times constitutes a change in a tour of duty. (33 FLRA 532)
- Management’s right to assign employees to tours of duty does not affect the right of Unions to negotiate flextime arrangements. (38 FLRA 1136)
- A proposal that called for the establishment of an array of tours of duty with set starting and quitting times, but which did not require that management assign any particular number of employees to any of them, was negotiable as an appropriate arrangement. (44 FLRA 1570)
- A proposal that involves both 5 USC 7106(a) and 5 USC 7106(b) (e.g., a proposal affecting the number of employees assigned to a particular shift), is negotiable because 5 USC 7106(b) exists as an exception to 5 USC 7106(a). (54 FLRA 521)
- The FSIP ordered the parties to negotiate over the Union proposal to allow an installation mechanic to work a 5-4/9 CWS, because the agency failed to show that the proposal would have an adverse agency impact. (100 FLRR 1-6513)
- A change in work assignments which resulted in 15-20 minutes of extra work each day was substantial in character. The agency committed a ULP when it failed to provide the Union with an opportunity to negotiate in advance of the change. (54 FLRA 531)
- The fact that a change affects only one employee will not necessarily render it de minimis. (60 FLRA 620) and (47 FLRA 419)
- A proposal that would allow employees to have their work schedules adjusted to enable them to attend weekend National Guard or military reserve meetings was negotiable. (43 FLRA 1140)

Article 24 – Annual Leave Negotiations:

In accordance with both the CBA and the white book, an employee has a right to use all of the annual leave that they are entitled to earn within a leave year. This is a very important fact to remember when negotiating your annual leave MOU. Notice it says “use” and does not say “bid.” Additionally, you need to keep in mind the definitions of what constitutes each category of annual leave. In accordance with both the CBA and the white book, there are three (3) categories of annual leave. They are as follows:

- Prime time annual leave (known as Vacation annual leave according to the FAA’s white book):

- This is leave that is bid, through a process for which the procedures are negotiated at the local level.
- Non-prime time annual leave (known as non-vacation annual leave according to the FAA's white book):
 - This is leave that is bid or requested outside of the prime time (vacation) annual leave bidding process negotiated procedure, AND prior to the posting of the watch schedule. Again, the parties at the local level shall negotiate the procedures for recording and/or requesting non-prime time annual leave requests.
- Spot annual leave:
 - This is leave that is requested for any period during a posted watch schedule or for the shift being worked. Again, the parties at the local level shall negotiate a secure method for recording spot leave requests.

You need to ensure that you negotiate all three (3) categories of leave as explained above. Please remember that these are contractually mandated obligations to bargain. As stated above, the covered-by doctrine does not apply.

When preparing your proposals, as well as in your negotiations, you should consider the following issues:

- Procedures and methods for employees bidding and/or requesting all three (3) categories of leave:
 - Prime (vacation);
 - Non-prime (non-vacation);
 - Spot;
- Number of rounds within the bidding process;
- How leave bids/requests will be recorded (SF-71, web schedule, etc.);
- When Prime-time (vacation) and Non-prime time (non-vacation) leave bidding begins and ends;
- Ensure that you know which BUEs are in the four (4), six (6), and eight (8) hour leave accrual categories;
- Secure procedures and methods for employees bidding and/or requesting annual leave:
 - Via seniority or other means;
 - Employees not present (leave, detail, etc.) during the bidding process;
 - New and transferring employees entering your facility after the bidding process begins or is completed;
 - When and how employees will be notified when it is their turn to bid;
 - How far in advance is said notification;
 - How long an employee has to submit their bid;
 - Bidding annual leave on duty time (an employee should **NEVER** be required to bid on their own time);

Contained below is some very relevant FLRA case law regarding annual leave negotiations:

- Proposals that would establish procedures for the granting of annual leave are generally negotiable. (24 FLRA 56)
- A proposal that merely required the agency to consider requests for advanced annual leave was negotiable. (46 FLRA 696)
- A proposal that would establish a system that would give employees access to desirable vacation periods on a rotating basis was negotiable. (27 FLRA 714)
- A proposal that would require the agency to notify employees of the possibility that they would suffer a forfeiture of annual leave, and requiring the agency to assist them in scheduling leave to avoid the forfeiture, was negotiable. (31 FLRA 360)
- A proposal that would have prohibited the agency from disapproving or rescinding annual leave, if doing so would result in forfeiture of leave was non-negotiable. (41 FLRA 589)

Basic watch schedule and annual leave negotiations for our Traffic Management bargaining unit:

If you are the FACREP of a facility where TMCs are assigned, you need to be aware that our TMCs are not under the structure or auspices of Air Traffic. Our TMCs fall under System Operations. As a result of this FAA structure, the ATM (or their designee) will not be authorized or willing to discuss any working condition with you regarding TMCs. Therefore, the only local level management official that is authorized to do so is the local level System Operations management official, known as the Traffic Management Officer (TMO). Your negotiations on behalf of the TMCs will be with the TMO or their designee.

Since the TMCs are covered by our CBA, you have full authority to negotiate on their behalf. However, due to the specific nature of their job function, unless you are a TMC, it would be suggested that you delegate the negotiations to your TMU area representative or at an absolute minimum, have a TMC on your negotiating team. One easy way to address this issue is to negotiate your Air Traffic MOU first, then have your TMU representative (or members of your choosing if you do not have a TMU representative) review this MOU for any changes that may be required specific to the TMU. You can then approach your TMO with an established Air Traffic agreement and simply review the changes that you felt were relevant for the TMU. This will greatly expedite the process and keep the agreements similar for the two groups within the same NATCA bargaining unit.

Final thoughts regarding local level basic watch schedule and annual leave negotiations:

As I stated in LR Chronicles number 32, it is highly suggested that your local level negotiations, regardless of the matter being negotiated, culminate in a written and signed agreement. If you request to do this, your manager is required by law to comply with your request. You are taking a chance if you agree with management to incorporate the negotiations into a local order, SOP, or other local level regulation.

Also as stated in LR Chronicles number 32, both the watch schedule and annual leave negotiations should be conducted simultaneously. While one is not dependent on the other, there may and most probably will be issues that are similar to both matters. Therefore, it will be

easier for you to keep track of those issues if you conduct those negotiations simultaneously. Finally, you are entitled to and should require two (2) separate and distinct agreements; one for the basic watch schedule and one for annual leave.

When you prepare for your negotiations, you should make a list of critical objectives that you want to have in your agreements on behalf of the bargaining unit(s) that you represent. Also, you should make a separate list of less critical objectives that would be nice to achieve. When preparing your proposals, all objectives from both lists should be included in your proposals to management. Please remember that negotiations are a “give and take.” You will not get everything you want to achieve, and neither will management. So leave yourself room to maneuver.

Approach your negotiations with the mindset that although you are negotiating the “2010” MOUs, you are also setting the table for your future negotiations. In other words, any agreement reached will become a living document that you can build upon each successive time that you negotiate that issue. This is a key principle to “incremental LR” and should be constantly reviewed as you examine where each move will take you in future negotiations.

Finally, it is important for you to know that you are not alone in your local negotiations. Whether you are a relatively new FACREP or a seasoned veteran, help is only a phone call or an email away to your RVP or regional LR Lead. You may also consider putting specific issues on the FACREP list serve and asking questions of the other representatives. It is most likely possible that your particular issue/question has already been addressed, attempted, or at least researched by another representative. Do not hesitate to call or email for assistance with any issue.

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