

Hello NWP Reps and Members;

Welcome to LR Chronicles number 4. This version of the LR Chronicles has to do with what action should be taken at the local level when management attempts to change personnel policies, practices, or matters affecting working conditions. Now, since the agency imposed their work and pay rules on an unwilling workforce, things have changed considerably regarding this issue. Of course, we are still only recognizing our 2003 Collective Bargaining Agreement (Green Book) and the agency is only recognizing their Imposed Work and Pay Rules (White Book). In accordance with Federal Law (5 USC Chapter 71), the agency has their rights and the Union has our rights. Unfortunately, if the Union feels that the agency, through their actions, has violated Federal Law, Rule, Regulation or our collective bargaining agreement (green book), we, as the Union are only left with fighting (appealing) the agency's actions on the back end by filing the appropriate paperwork (grievance or ULP).

Failure to negotiate is a violation of law (5 USC 7117), our 2003 collective bargaining agreement (Green Book), AND their Imposed Work and Pay Rules (White Book). For purposes of this version of LR Chronicles, I am going to mainly concentrate on the differences between our ratified CBA and their Imposed Work and Pay Rules. The reason I am doing this is because our CBA and the IWR expands upon and is more in-depth than the way the law reads as well as gives us a better argument in front of a third party neutral.

The first thing to remember regarding this issue is that in accordance with FLRA case law, an agency is ONLY obligated to bargain those changes that are more than De minimus. The term De minimus is a Latin term that means "of the least", "trifling" or "minimal". An action (grievance/ULP/Negotiability appeal), may be dismissed if the claim or cause is considered to be De minimus. However, also please remember that ONLY a 3rd Party neutral can decide that an issue is De minimus. The FAA can make that claim, but if you do not agree, it is still your right to appeal that agency decision and get the issue in front of a 3rd Party neutral.

Now, let's get into the differences between the CBA and their IWR regarding bargaining and negotiations. The 2003 CBA, in Article 7 states:

Section 1. **It is agreed that personnel policies, practices and matters affecting working conditions, not expressly contained in this Agreement, shall not be changed by the Agency without prior notice to, and negotiation with the Union.** The provisions of this Article also apply to substance bargaining, if appropriate, and/or impact and implementation bargaining arising from changes to operational procedures and procedures resulting from technological changes.

Section 2. **Should the Agency at the national, regional or local level propose a change described in Section 1, thirty (30) days written notice of the proposed change shall be provided to the Union at the corresponding level,** unless operational necessity requires a shorter notice period. It is agreed longer notice periods are in the best interest of the Parties and should be provided whenever feasible. The Union shall have up to fifteen (15) days from receipt of the notice to request a meeting regarding the change. If the Union requests a meeting, the meeting will be held within ten (10) days of the Union's request, and the Parties will review the proposed changes. The Union may submit written proposals within thirty (30) days of receipt of the original notice of the change(s). If the Union requests a meeting or submits written proposals, the Parties shall meet at a mutually agreeable time and place to conduct negotiations. The Parties agree that every effort shall be made to reach agreement as expeditiously as possible. If the Union does not request a meeting or submit written proposals within the prescribed time period, the Agency may implement the change as proposed.

For purposes of this LR Chronicles, I have highlighted in bold the two most important provisions. When I say most important, it is not that the other provisions are not important, but for this purpose, I want to stress to you what you need to be looking for. I want to stress the following:

- Personnel policies, practices and matters affecting working conditions;
- Not expressly contained in this agreement;
- Shall not be changed without prior notice to and negotiation with the Union; and
- National, regional or local level and at the corresponding level.

The first bullet above covers just about everything that the agency could change. Please remember that it must be more than De minimus and only a 3rd Party neutral can decide what is and what is not De minimus. The second bullet means that if it is already in the contract, the agency does NOT have to notify you or negotiate with you because based on FLRA case law, that matter is deemed "covered-by" the CBA and therefore closed. The third bullet states that they must notify you and then negotiate with you on all negotiable proposals that you submit. The last bullet means that they must notify the Union at whatever level the change is proposed. If the proposed change only covers 1 facility, they must notify the Union at that facility. If the proposed change covers multiple facilities with one region, they must notify the Union in that Region. If the proposed change crosses regional boundaries, then they must notify the Union at the National level.

However, since the agency imposed their rules, in their eyes, things have changed. Their rules now state the following:

Section 1. **It is agreed that personnel policies, practices and matters affecting working conditions, not expressly contained in this Agreement, shall not be changed by the Agency without prior notice to, and negotiation with the Union in accordance with applicable law.** The provisions of this Article apply to substance bargaining, if appropriate, procedures which the Agency will observe in exercising a management right, and/or appropriate arrangements for employees adversely affected by the exercise of a management right.

Additionally, the provisions of this Article apply to any negotiations specifically required or allowed by reference in any provision of this Agreement.

Section 2. **All bargaining shall be at the national level, except where specifically authorized by this Agreement or otherwise agreed to by the Parties at the national level.** Agreements reached as a result of mid-term bargaining may not increase or diminish entitlements expressly contained in this Agreement or otherwise conflict with any express provision of this Agreement.

Section 3. **Should the Agency propose a change described in Section 1, thirty (30) days written notice of the proposed change shall be provided to the Union at the national level except where specifically authorized by this Agreement or otherwise agreed to by the Parties at the national level.**

As you can see, there are quite a few differences between the two documents. As a result, I want to stress the following:

- Personnel policies, practices and matters affecting working conditions;
- All bargaining shall be at the national level, except where specifically authorized by this agreement or otherwise agreed to by the Parties at the National level;
- Should the agency propose a change...notice of the change shall be provided to the Union at the national level except where specifically authorized by this agreement.

The first bullet covers just about everything that they could change and there is no difference from our contract. The second bullet states that they only have to notify the Union at the national level rather than the corresponding level, except where they state local bargaining can take place. The third bullet states again that they only have to notify and bargain with the national level except where they have allowed local bargaining.

The big difference here is local and regional bargaining. There is a reason for this. Under 5 USC 7106(b)(1) and FLRA case law, it is a permissive subject of bargaining for allowing negotiations below the level of exclusive recognition. The level of exclusive recognition for NATCA is at the National Level only. If you read 5 USC 7106(b)(1), the first words in that provision are "At the election of the Agency..." Therefore, if they choose NOT to bargain below the National level, they do not have to unless they agree to do so, which they did in the negotiations for the green book. They chose not to (except in a few circumstances) in the negotiations for their white book. This is the very reason why this issue has changed since September 3, 2006.

Why is this important? We, at the Regional level want you to know how to handle these types of disputes when they arise at the local level. Since the agency will ONLY follow their imposed work and pay rules and not our contract, they will NOT notify you, at the local level, of any change unless it is already specifically contained within their version of Article 7 for local negotiations.

As a result, this guidance is sent to you in order to assist you in how to handle this situation. The NWP Regional Guidance is very simple and is as follows:

- If anything changes at your facility that affects personnel policies, practices or other matters affecting working conditions, whether you were notified or not, please notify your LR Advocate, me or Ham immediately. **Please keep in mind that once you notify us at the Regional level, we then must contact the National level and then they must contact the FAA at the national level. There are very strict time limits contained in Article 7 of the CBA. Therefore it is EXTREMELY important for you to notify the Region just as soon as you become aware of a change in working conditions or other conditions of employment.**
- Once you become aware of the change, please write a letter to your ATM and put them on notice that what they are doing is in violation of law and contract and you expect them to comply with the law and contract. Please scan the letter you send and email it to me immediately.

- Along with the above letter, please send me an email that fully describes what the change is and what the previous (negotiated or not) practice/policy was. Please include any documentation that you have regarding both the former and the new policy, i.e., MOUs, local orders, FSOPs etc.
- If you receive any response to the above letter, please scan that (along with any other information that they may give you) and email that to me immediately.

I will work very closely with the National Office Representative and forward all documentation to them.

The NATCA National Office, along with the NEB, is working on a template and procedures for all FACREPs to use should a change occur at the local level in which the agency does not notify you. Just as soon as I receive it from the National Office, I will forward it to you along with any Regional specific procedures for you to use.

Thank you very much for your time and attention to this very important matter.

Mike Hull
NWP LR Lead