REFERENCE GUIDE

BARGAINING ON NONAPPROPRIATED FUND ISSUES

Purpose

This guide provides a summary of various negotiability decisions by the Federal Labor Relations Authority (FLRA) and negotiation impasse decisions by the Federal Service Impasses Panel (FSIP) applicable to negotiations in the Nonappropriated Fund (NAF) arena. While many of these decisions include proposals on other matters, we have intentionally limited this guide to only those proposals which concern issues unique to the NAF community. Our discussion on FSIP decisions is further limited to concern only those proposals on NAF unique issues which the FSIP actually ordered union and management to adopt new contract language.

As significant new decisions and rulings are made that impact on NAF bargaining changes, this guide will be updated. If there are questions that may not be clearly addressed by the cases described in this guide, contact Defense Civilian Advisory Service, Labor and Employee Relations, for assistance with a specific question or problem. As always, any negotiations or impasse issues should be coordinated with the respective component's NAF headquarters.

Background

Under 5 USC Chapter 7117(a)(1), if a matter is specifically provided for by law or government-wide rule or regulation, any proposal that conflicts with such law or government-wide rule or regulation would be considered nonnegotiable. For the most part, NAF personnel matters are provided for by agency regulations, such as DODI 1400.25, not law or government-wide rules or regulations. How does this affect our obligations to bargain on NAF issues? Under 5 USC 7117(a)(2), a matter may be outside the duty to bargain if it conflicts with an agency regulation for which a compelling need exists.

Under 5 CFR 2424.11, compelling need exists when the rule or regulation (a) is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the agency or primary national subdivision in a manner which is consistent with the requirement of an effective and efficient government; (b) is necessary to ensure the maintenance of the basic merit principles; and/or (c) implements a mandate to the agency or primary national subdivision under law or outside authority, which

implementation is essentially nondiscretionary in nature. With few exceptions, the FLRA has routinely dismissed agency compelling need arguments on NAF regulations.

While not necessarily included in this guide, we would like to make you aware of case law that concerns employees in other pay systems not established by statute. Wages and benefits for employees in such agencies including, but not limited to, the Department of Defense Domestic Dependents' Elementary and Secondary Schools or the Bureau of Engraving and Printing are not specifically provided for by statute. Therefore, you are not limited to the decisions provided in this guide. Negotiability and impasse decisions for other agencies may provide you additional information to assist you in responding to union proposals on wages and benefits. However, for the purpose of this guide, we are emphasizing decisions involving NAF organizations.

NEGOTIABILITY DECISIONS

SUPREME COURT

- There is one significant Supreme Court decision which supports most of the FLRA decisions in this guide. In *Fort Stewart Schools v. FLRA, 110 S.Ct. 2043 (1990),* the Supreme Court found that proposals concerning pay and fringe benefits are negotiable conditions of employment in circumstances where pay and fringe benefits are not specifically provided for by statute

EXCUSED ABSENCES / HOLIDAYS

- Proposal is negotiable which provides that excused absence be granted to regularly scheduled intermittent employees for purposes of jury duty, military duty or during periods of shutdown. The proposal 1) concerns a condition of employment; and 2) the agency failed to demonstrate a compelling need for its regulation. *SEIU, Local 556 and Fort Shafter, 26 FLRA No. 47 (1987) (proposal 6) (0-NG-750).* As part of a consolidated appeal, the Ninth Circuit Court of Appeals remanded the case to the FLRA to revisit the issue of compelling need for the agency regulation. *Navy Exchange, Pearl Harbor and FLRA, 841 F.2d 1128 (9th Cir. 1988).* On remand, the FLRA reaffirmed its previous decision in *26 FLRA No. 47. SEIU, Local 556 and Fort Shafter, 37 FLRA No. 21 (1990) (proposal 4) (0-NG-750).*
- Proposal is negotiable which mandates the holidays which will be observed, including the employee's birthday. The Authority found that negotiation of proposals relating to pay and benefits are negotiable if 1) the matters proposed are not specifically provided for by law and are within the discretion of the agency;

and 2) the proposals are not otherwise inconsistent with law, government-wide rule or regulation; and 3) the agency failed to demonstrate compelling need for its regulation. *SEIU, Local 556 and Fort Shafter, 29 FLRA No. 124 (1987) (proposal 2). This decision was affirmed on appeal to the 9th Circuit Court of Appeals. Fort Shafter and FLRA, 914 F.2d 1291 (9th Cir. 1990).*

FOOD SERVICE

- Proposals are negotiable which increase the value of free meals provided to NAF employees. The Authority found that the proposals did not interfere with the agency's right to determine its budget as the proposals do not prescribe a particular program or operation to be included in the agency's budget and do not prescribe a particular amount to be allocated in the budget. The agency failed to demonstrate that the proposals would result in a significant and unavoidable increase in costs and failed to demonstrate that the increased costs would not be offset by compensating benefits. Finally, the agency failed to demonstrate a compelling need for its regulation *AFGE, Local 2670 and AAFES, 10 FLRA No. 19 (1982).*

INSURANCE

Collective bargaining on health care proposals is non-negotiable in that it is counter to the non-discretionary mandate for DoD-wide uniformity required of the National Defense Authorization Act for FY1995, because it could lead to different agreements among the six DoD components and their subordinate agencies on premium contribution rates and PPO coverage;

1) Section 349 of the National Defense Authorization Act for FY1995, PL 103-337, 108 Stat. 2727 (Oct. 5, 1994) provides that –
   a) IN GENERAL – Not later than October 1, 1995, the Secretary of Defense shall take such steps as may be necessary to provide a uniform health benefits program for employees of the Department of Defense assigned to a nonappropriated fund instrumentality of the Department.
2) House Report of Committee on Armed Services H. Rept. 103-499 (May 10, 1994) stated the following with regard to Nonappropriated Fund Health Benefits:
   a) There are approximately 120,000 nonappropriated fund (NAF) employees in the Department of Defense who work in NAF instrumentalities (NAFI) in support of military morale, welfare and recreation (MWR) program. In accordance with section 2105(c), title 5, United States Code, NAF employees are not Federal employees for purposes of most laws administered by the U.S. Office of Personnel

Management. Consequently, they are excluded from civil service employee benefit programs, including the Federal Employee Health Benefit Program.

From 1942 to 1972, each NAFI established a health plan for its employees. The Army, Navy (Navy Exchange Service Command, Bureau of Naval Personnel and Marine Corps), Air Force, and the Army and Air Force Exchange Service each offer comprehensive health insurance coverage, including health maintenance organizations and preferred provider options. These plans have major differences in provisions and premium contribution rates and this is inconsistent with the national effort toward universal health care coverage. Accordingly, section 376 would require the Secretary of Defense to provide for a single, uniform program for nonappropriated fund employees.

In *American Federation of Government Employees, Local 3240 and Department of the Air Force, Air Education and Training Command, Tyndall Air Force Base, Florida, 58 FLRA No. 168 (July 15, 2003),* proposals attempting to negotiate premiums for cost of coverage of NAF employee health care coverage were found non-negotiable and outside the duty to bargain, based the language contained in Section 349 of the National Defense Authorization Act for FY1995

LEAVE

- Proposal is negotiable which requires that regularly scheduled intermittent employees accrue sick leave at the rate of five (5) percent of the total basic workweek. The proposal 1) concerns a condition of employment; and 2) the agency failed to demonstrate a compelling need for its regulation. *SEIU, Local 556 and Marine Corps Exchange, Kaneohe Bay / Fort Shafter, 26 FLRA No. 47 (1987) (proposal 1) (0-NG-737) and (proposal 2) (0-NG-750).* As part of a consolidated appeal, the Ninth Circuit Court of Appeals remanded the case to the FLRA to revisit the issue of compelling need for the agency regulation. *Navy Exchange, Pearl Harbor and FLRA, 841 F.2d 1128 (9th Cir. 1988). 26 FLRA No. 47. SEIU, Local 556* and *Marine Corps Exchange, Kaneohe Bay /Fort Shafter, 37 FLRA No. 21(1990) (proposal 1) (0-NG-737) and (proposal 1) (O-NG-750).*
- Proposal is negotiable which requires that regularly scheduled intermittent employees earn annual leave depending on the employee's length of service. The proposal 1) concerns a condition of employment; and 2) the agency failed to demonstrate a compelling need for its regulation. *SEIU, Local 556 and Marine Corps Exchange, Kaneohe Bay / Fort Shafter, 26 FLRA No. 47 (1987) (proposal 3) (0-NG-737) and* (proposal 4) (0-NG-750). As part of a consolidated appeal,

the Ninth Circuit Court of Appeals remanded the case to the FLRA to revisit the issue of compelling need for the agency regulation. *Navy Exchange, Pearl Harbor and FLRA, 841 F.2d 1128 (9th Cir. 1988).* On remand, the FLRA reaffirmed its previous decision in *26 FLRA No. 47. SEIU, Local 556 and Marine Corps Exchange, Kaneohe Bay / Fort Shafter, 37 FLRA No. 21 (1990) (proposal 2) (0- NG-737) and (proposal 2) (0-NG-750).*

- Proposal is negotiable which provides that regularly scheduled intermittent male employees may request annual leave and/or leave without pay for paternity reasons. The proposal 1) concerns a condition of employment; and 2) the agency failed to demonstrate a compelling need for its regulation. *SEIU, Local 556 and Fort Shafter, 26 FLRA No. 47 (1987) (proposal 5) (0-NG-750).* As part of a consolidated appeal, the Ninth Circuit Court of Appeals remanded the case to the FLRA to revisit the issue of compelling need for the agency regulation. *Navy Exchange, Pearl Harbor and FLRA, 841 F.2d 1128 (9th Cir. 1988)*. On remand, the FLRA reaffirmed its previous decision in *26 FLRA No. 47. SEIU, Local 556 and Fort Shafter, 37 FLRA No. 21 (1990) (proposal 3) (0-NG-750).*
- Proposals are negotiable which provide court leave and funeral leave to employees. The proposals concern employees' conditions of employment and the agency failed to demonstrate a compelling need for its regulation. *AFGE, Local 1786 and Marine Corps Exchange, Henderson Hall, 26 FLRA No. 54 (1987) (proposals 3, 4 & 5).*
- Proposal is negotiable which provides that when an employee changes grade for whatever reason, their total hours of accrued annual leave will not be changed. The Authority found the proposal 1) to concern a condition of employment; and 2) the agency failed to demonstrate a compelling need for its regulation. *NAGE, Local R7-23 and Scott Air Force Base, 26 FLRA No. 106 (1987) (proposal 1).*
- Proposal is negotiable which establishes the maximum amount of accumulated vacation leave that may be carried over from one leave year to the next. The proposal 1) concerned a condition of employment; and 2) the agency failed to demonstrate a compelling need for its regulation. *AFGE, Local 2317 and Marine Corps, Albany, 29 FLRA No. 126 (1987) (proposal 4).*
- Proposal is negotiable which requires the agency to reimburse employees for any loss of funds incurred as a result of the cancellation of leave by the agency. The proposal concerns a condition of employment and is not inconsistent with law, rule or regulation. To the extent that such funds required by this proposal need not be derived from appropriated funds, the proposal is negotiable. *NAGE, Local R4-26 and Langley Air Force Base, 40 FLRA No. 15 (1991) (proposal 1).*

MILITARY CHILD-CARE ACT

- Proposal is partially negotiable and partially nonnegotiable which requires the employer to provide free child-care services for unit employees' children when the employee is in a duty status. To the extent that the proposal concerns free child-care services for children at centers that do not provide services for members of the Armed Forces, the proposal is negotiable. However, to the extent that the proposal would require free child-care services at centers which do provide services to members of the Armed Forces, it is inconsistent with the Military Child-Care Act of 1989 and outside the duty to bargain. *NAGE, Local R4-26 and Langley Air Force Base, 40 FLRA No. 15 (1991) (proposal 4).*
- Proposal is negotiable which provides that conversion of current child-care employees to positions in the new child-care grade system will be based solely on performance and experience. The proposal is consistent with the Military Child-Care Act of 1989. The agency argued that the proposal also interfered with management's right to make selections for appointment under 5 USC 7106(a)(2)(C). However, the Authority noted that there was insufficient evidence in the record to determine whether the proposal interferes with the agency's right to make selections for appointment. *NAGE, Local R4-6 and Fort Eustis, 42 FLRA No. 46 (1991) (proposal 1).*
- Proposal is negotiable which provides that employees will be converted to the new child-care system without competition. The proposal is consistent with the Military Child-Care Act of 1989. The agency argued that the proposal also interfered with management's right to make selections for appointment under 5 USC 7106(a)(2)(C). However, the Authority noted that there was insufficient evidence in the record to determine whether the proposal interferes with the agency's right to make selections for appointment. *NAGE, Local R4-6 and Fort Eustis, 42 FLRA No. 46 (1991) (proposal 6).*
- Proposal is nonnegotiable which would provide a child development center employee a fifty percent discount on the fee normally charged the employee for child-care services when the services are provided by the center during the employee's duty hours. The proposal conflicts with the Military Child-Care Act of 1989 as the proposal concerns a child-care center that provides services for members of the Armed Forces. *NAGE, Local R4-6 and Fort Eustis, 42 FLRA No. 46 (1991) (proposal 8).*
- Proposal is negotiable which requires specific step increases within a pay band based on an employee's annual performance rating. The proposal is consistent with the child-care pay schedule of the Military Child-Care Act of 1989 and does not interfere with the agency's right to determine its budget. *NAGE, Local*

R4-6 and Fort Eustis, 42 FLRA No. 46 (1991) (proposal 13).

PART-TIME EMPLOYEES

- Proposal is negotiable which requires that part-time employees be utilized only when it is not practical or prudent to use full-time employees. The FLRA found that the proposal would establish a general, non-quantitative contractual requirement by which management's use of part-time employees could be evaluated in a grievance filed by a full-time employee who believes he or she has been adversely affected by the agency action. *AFGE, Local 987 and Air Force, AFLC, 8 FLRA No. 116 (proposal 1) (1982).* This decision was overturned on appeal to the Eleventh Circuit Court of Appeals. The Court ruled that the union proposal was determinative of numbers of employees assigned to an organizational unit and, thus not bargainable. Air Force, AFLC and FLRA, 727 F.2d 1502 (11th Cir., 1984).

PROBATIONARY EMPLOYEES

- Proposal is partially nonnegotiable and partially negotiable. Specifically, the proposal allows probationary employees to grieve terminations. Since the probationary period, including summary termination, constitutes an essential element of the agency's right to hire under 5 USC 7106(a)(2)(A), the proposal is nonnegotiable. The proposal also allows intermittent employees to grieve terminations. Since the agency failed to establish that intermittent employees served probationary periods, this part of the proposal is negotiable. *SEIU, Local 556 and Marine Corps Exchange, Kaneohe Bay, 26 FLRA No. 95 (1987).*
- Proposal is nonnegotiable which provides that the probationary period for regular full-time and regular part-time employees will 1) not apply to employees who served at least six months in an intermittent position prior to their conversion to regular full-time or part-time; and 2) be offset by the amount of time actually served by an intermittent who served fewer than six months. The proposal conflicts with an agency regulation which has a compelling need. Specifically, the agency regulation has a compelling need because the probationary period is an essential part of the hiring process and necessary for an effective and efficient service. *SEIU, Local 556 and Fort Shafter, 29 FLRA No. 124 (1987) (proposal 4).*
- Proposal is nonnegotiable which requires the agency to give probationary employees counseling and written guidance concerning their performance deficiencies in order to bring their performance to an acceptable level.

- The proposal would totally eliminate the agency's ability to exercise its right to summarily terminate probationary employees by requiring the agency to provide procedural protections prior to completion of the probationary period. The proposal excessively interferes with management's right to hire employees under 5 USC 7106(a)(2)(A) as the hiring process for probationary employees is not complete until management has decided whether to retain such employees on a permanent basis. The right to summarily terminate a probationary employee constitutes an element of management's right to hire. *AFGE, Local 1625 and Oceana Naval Air Station, 31 FLRA No 117 (1988) (proposal 2).*

REDUCTION-IN-FORCE / BUSINESS-BASED ACTIONS / TERMINATIONS

- Proposal is nonnegotiable which attempts to provide NAF employees with an option to contest performance based separations for cause through either the agency's internal regulatory appeals procedure or through the negotiated grievance procedure which covers such matters. Since the agency's internal regulatory appeals procedure is not established by law, challenges to performance based separations for cause of NAF employees are required by 5 USC 7121(a)(1) to be processed exclusively through the negotiated grievance procedure which covers such matters. *AFGE, Local 1799 and Aberdeen Proving Ground, 22 FLRA No. 62 (1986) (proposal 1).*
- Proposal is negotiable which requires that reduction-in-force principles be applied whenever an employee is scheduled for separation or downgrade through no fault of his/her own. Contrary to the agency's arguments, the proposal does not conflict with the agency's right to assign and layoff employees. In addition, the agency failed to demonstrate a compelling need for the agency regulation. *NAGE, Local R7-23 and Scott Air Force Base, 26 FLRA No. 106 (1987) (proposal 2).*
- Proposals are nonnegotiable which would establish criteria for determining the order by which nonappropriated fund employees would be retained in those positions not eliminated in a reduction-in-force or business-based action. The proposals interfere with the agency's right to lay-off employees under 5 USC 7106(a)(2)(A). *SEIU, Local 556 and Fort Shafter, 29 FLRA No. 124 (1987) (proposals 5, 6, & 7).*
- Proposal is negotiable which allows intermittent and temporary nonappropriated fund employees to contest terminations for cause through the negotiated grievance procedure. *NAGE, Local R5-82 and Navy Exchange, Naval Air Station, 43 FLRA No. 2 (1991) (proposal 6).*

SHOPPING PRIVILEGES

- Proposal is negotiable that provides shopping privileges at the Base Exchange for all nonappropriated fund employees. The proposal 1) concerns a condition of employment; 2) does not interfere with the agency's right to determine its mission under 5 USC 7106(a)(1); and 3) the agency failed to demonstrate a compelling need for its regulation. *SEIU, Local 556 and Marine Corps Air Station, Kaneohe Bay, 49 FLRA No. 114 (1994).* For a related negotiability case, see *NAGE, Local R1-100 and Navy Branch Exchange Store, U.S. Naval Submarine Base, Groton, 46 FLRA No. 48 (1992).* For a related unfair labor practice case on shopping privileges, see *Eielson Air Force Base and AFGE, Local 1836, 23 FLRA No. 83 (1986).*

TOURS-OF-DUTY

- Proposal is partially negotiable and partially nonnegotiable which precludes management from changing employees' tours of duty to work on holidays to avoid payment of overtime. To the extent the proposal applies to employees who are subject to 5 CFR 610.121 (i.e., Crafts and Trades) (see 5 CFR 610.101 and 5 USC 5342(a)(2)(B)), the proposal is nonnegotiable for being inconsistent with a government-wide regulation. To the extent the proposal applies to employees who are not subject to 5 CFR 610.121, the proposal is negotiable as an appropriate arrangement under 5 USC 7106(b)(3). *NAGE, Local R14-52 and Red River Army Depot, 44 FLRA No. 61 (1992) (proposal 2).*

WAGES

Consistent with the Supreme Court decision in *Fort Stewart Schools v. FLRA, 110 S.Ct. 2043 (1990),* the FLRA determines proposals concerning wages to be negotiable conditions of employment in circumstances where such wages are not specifically provided for by statute.

- Proposal is negotiable which limits the amount of tip offset for tipped employee who earns more than thirty (30) dollars per month to be not more than ten (10) percent of the minimum wage. The proposal was consistent with the Fair Labor Standards Act (FLSA) as the agency was left with the discretion to determine the tip offset percentage. Contrary to the agency's position, the FLRA did not find the provision to be inconsistent with the prevailing rate statute. *AFGE, Local 987 and Air Force, AFLC, 8 FLRA No. 116 (1982) (proposal 2).*

- Proposal is nonnegotiable which mandates that the commission rate paid to AAFES mechanics not be reduced from sixty (60) percent to forty (40) percent, but remain at sixty (60) percent. The Authority found that mechanics' wages are established by the prevailing rate statute. *AFGE and AAFES, 32 FLRA No. 86 (1988).* This decision was overturned in a later case by the Authority. Specifically, the Authority determined, to the extent that AFGE and AAFES extends to all aspects of pay-setting for prevailing rate employees, this decision is erroneous and the Authority will no longer follow this decision. (See discussion below on 50 FLRA No. 87)
- Proposal is negotiable which requires that all employees receive a six (6) percent wage increase every year for the next three years. The proposal 1) involves a condition of employment; 2) does not interfere with the agency's right to determine its budget; and 3) the agency regulation has no compelling need. *NAGE, Local R4-26 and Langley Air Force Base, 40 FLRA No. 15 (1991) (proposal 3).* However, to the extent that the proposal would affect employees covered under the Prevailing Rate Systems Act of 1972, the proposal conflicts with this statute and is nonnegotiable. As it relates to prevailing rate employees, this decision was overturned in a later case by the Authority. Specifically, the Authority determined, to the extent that NAGE, Local R4-26 and Langley Air Force Base extends to all aspects of pay-setting for prevailing rate employees, this decision is erroneous and the Authority will no longer follow this decision. (See discussion below on 50 FLRA No. 87.)
- Proposal is nonnegotiable which mandates that the agency charge its patrons a twenty (20) percent surcharge on prices for services rendered at special functions. The proposal mandated that the surcharge be divided among the employees who perform work at these special functions. The proposal does not concern a condition of employment and is, therefore, outside the duty to bargain. There is no direct connection between the prices the agency charges for its services and the work situation or employment relationship of the bargaining unit. *NAGE, Local R4-26 and Langley Air Force Base, 40 FLRA No. 15 (1991) (proposal 5).*

As the above cases demonstrate, the FLRA has ruled that all aspects of prevailing rate employees' wages were established by statute. Therefore, proposals to establish wages for prevailing rate employees were found to be nonnegotiable. The FLRA backed away from this position in 1995.

- On remand from the D.C. Circuit Court of Appeals, *Treasury, Bureau of Engraving and FLRA, 995 F.2d 301 (D.C. Cir. 1993),* the Authority concludes that, to the extent that the Authority's decisions in AAFES and Langley hold that all matters pertaining to wage rates for prevailing rate employees under 5 USC 5343 were specifically provided for by Federal statute, they are erroneous. While the Authority noted that some aspects of wage-setting under 5343 may be specifically provided for by that statute, the Authority declined to say which aspect of wage-setting is specifically provided for by statute. However, to the extent that AAFES and Langley extend to all aspects of pay-setting, the Authority will no longer follow those decisions or others based on the same rationale. *IAM Lodge 2135 LIUNA, Locals 2, 24, 32 and Treasury, Bureau of Engraving, 50 FLRA No. 87 (1995).*

FEDERAL SERVICE IMPASSES PANEL DECISIONS

- In this case, the Union proposed that the agency maintain the practice of allowing NAF employees, who are on duty at the club, to eat any leftover food, free of charge, after the serving lines close. The agency proposed that employees be permitted to consume, free of charge, food which has been determined by management to be non-recyclable. In addition, the agency proposed that employees would be charged the raw food cost of food determined by management to be recyclable. The Panel ordered that management withdraw its proposal and continue the practice as proposed by the union. The Panel noted that the agency failed to support its proposal to change the practice and relatively few employees were affected. *NAGE, Local R7-23 and Scott Air Force Base, 83 FSIP 30 (1983).*
- The union proposed that employees be offered an alternative opportunity to enroll in a Health Maintenance Organization (HMO) which the parties have agreed to be acceptable. The agency proposed that the Union initiate any solicitation for bids for an HMO to be presented through appropriate Air Force channels for approval. If approved, it would be made available to eligible employees. The agency noted that it was prohibited by agency regulation from soliciting bids for an HMO. The Panel adopted the union's proposal as amended to provide that only "eligible" employees are offered the HMO benefit. *AFGE, Local 1857 and McClellan Air Force Base, 87 FSIP 39 (1988).* The Panel declined to assert jurisdiction on other proposals which the agency asserted were nonnegotiable.
- The union proposed specific pay rates for Administrative Support (AS) contrary to the agency's policy of treating AS employees as prevailing rate employees by limiting wage increases to the same percentages awarded to General Schedule

employees. The union's proposal amounted to a nineteen (19) to twenty (20) percent pay increase. The agency proposed that the status quo be maintained. The agency noted that the union has not demonstrated a need to change the existing policy and the union's proposal is not affordable. The Panel found that the union has demonstrated a need to change the agency policy due to the pay gap with comparable employees in the local area. However, the Panel found the union's proposed pay increase to be extreme and ordered the agency to increase pay rates by ten (10) percent and that the rate remain effective through the life of the parties' collective bargaining agreement. *AFGE, Local 2600 and Navy, Resale and Services Support Office, 91 FSIP 182 (1992).*

- The union proposed that the agency pay seventy (70) percent of the costs of the employees' health insurance premiums. The agency proposed that the status quo of paying fifty (50) percent be maintained. The Panel ordered the agency to pay sixty (60) percent of the employees' health insurance premiums. The Panel was not persuaded that a ten (10) percentage point increase in the agency's contribution would have an adverse impact on the agency's mission. *NAGE, Local R4-6, SEIU and Fort Eustis, 91 FSIP 200 (1992).*
- The agency proposed that "bump-and-retreat" rights be eliminated from current reduction-in-force (RIF) / business-based action procedures. The agency asserted that this would eliminate the disruptive effect that current RIF procedures have on the organization. The union proposed that "current reduction-in-force procedures" be maintained, including the "bump-and-retreat" rights. The Panel adopted the union's proposal as it was not persuaded that the agency demonstrated a need to eliminate "bump-and-retreat" rights for NAF employees. The Panel concluded the existing system protected the job security of senior employees. *AFGE, Local 1858 and Redstone Arsenal Support Activity, 93 FSIP 37 (1993).*
- The union proposed mandatory minimum performance awards and annual bonuses be paid depending on length of service. The agency proposed that the decision to grant awards and the amounts to be provided be discretionary on management's part. The agency argued that the union's proposal was too costly. The Panel adopted a compromise provision of mandatory performance awards limited to employees who are rated outstanding and excellent, at lower percentages than the union's proposal, but higher than the expired agreement. The union was ordered to withdraw its proposal concerning annual bonuses. The union also proposed that the probationary period for all NAF employees be six (6) months. The agency proposed that the probationary period for all regular employees be one (1) year with credit applied from flexible service when the flexible appointment is converted to a regular appointment with no changes in duties and with no break in service. The Panel adopted the agency's proposal as it would provide the

Employer a better opportunity to evaluate a newly-hired employee. *NAGE, Local R5-160 and Fort Bragg, 96 FSIP 19 (1996).*

Conclusion

This guide provides only summaries. Before you rely on any of these cases to support negotiability or impasses dispute at your activity, we urge you to review the entire decision to ensure that the case supports your position.

If you have any questions concerning this guide or any other NAF labor relations matter, please contact the office by email at dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil, or by telephone at 703-882-5192. As always, any negotiations or impasse issues should be coordinated with the respective component's NAF headquarters.

References

- 5 USC Chapter 71, Labor-Management Relations
- 5 CFR Part 2424, Negotiability Proceedings
- 5 CFR Subchapter D (Part 2470-73), Federal Service Impasses Panel
- DOD 1401.1-M, Chapter 1400, Nonappropriated Fund Personnel Management