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Civilian Personnel

# **RESOLVING LABOR NEGOTIATION IMPASSES**

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# ***SUMMARY of CHANGE***

DA PAM 690-33

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Civilian Personnel

RESOLVING LABOR NEGOTIATION IMPASSES

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**By Order of the Secretary of the Army:**

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**History.** This publication has been organized to make it compatible with the Army electronic publishing database. No content has been changed. This copy is a reprint which includes current pages from Change 1.

**Summary.** This pamphlet is designed to assist Army managers and staff officials

with their dealings with the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP) in resolving impasses in labor negotiations. It focuses on the operations and functions of FMCS and FSIP and how to use their services effectively.

**Applicability.** This pamphlet applies to the Active Army, the Army National Guard (ARNG), and the US Army Reserve (USAR). Specifically, this pamphlet applies to Army managers and staff officials charged with labor relations responsibilities.

**Proponent and exception authority.** The proponent of this pamphlet is the Office of the Deputy Chief of Staff for Personnel.

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**Suggested Improvements.** Suggested Improvements. The proponent of this pamphlet is the Office of the Deputy Chief of Staff for Personnel. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to HQDA (DAPE-CPL) WASH DC 20310.

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## Chapter 1 Introduction

### 1-1. Purpose

This pamphlet provides guidance on dealing effectively with the Federal Mediation and Conciliation Service (FMCS) and the Federal Service Impasses Panel (FSIP) in resolving negotiation impasses. It explains in detail the methods of operations of the FMCS and FSIP. It is intended to aid Army managers and staff officials in carrying out their labor relations responsibilities.

### 1-2. Abbreviations and Terms

FLRA—The Federal Labor Relations Authority (also referred to as “The Authority”)

FMCS—The Federal Mediation and Conciliation Service (also referred to as “The Service”)

FSIP—The Federal Service Impasses Panel (also referred to as “The Panel”)

Title VII—Title VII of the Civil Service Reform Act (which has been incorporated into title 5, United States Code at 5 USC 7 101 et seq.)

The Statute—Chapter 71 of title 5 of the United States Code (may be cited as 5 USC 7101 et seq.)

Impasse—A stalemate in negotiations

Negotiability Dispute—A question as to whether a union proposal conflicts with law, rule, or regulation

### 1-3. Scope of Labor Management Negotiations in the Federal Government

The scope of the duty to bargain as described in 5 USC 7117 extends to conditions of employment, i.e., personnel policies, practices and matters affecting working conditions of bargaining unit employees unless the matters proposed for bargaining are inconsistent with Federal law or Government-wide rule or regulation. A rule or regulation concerning personnel policy and practices issued by Department of Defense (DoD) or Department of the Army (DA) will also serve as a bar to negotiation of matters inconsistent with the rule or regulation unless a specific exception has been granted by the issuing authority, or the Federal Labor Relations Authority has determined that a compelling need does not exist for the DOD/DA rule or regulation. The compelling need test for an agency rule or regulation is a stringent one and, therefore, few agency regulations to date have been held to have a compelling need.

Section 7106(a) of title 5, United States Code, prescribes certain management rights which are precluded from negotiations. However, section 7106(b)(2) of the Statute requires management to bargain on the procedures it will use in exercising its section 7106 rights. Moreover, section 7106(b)(3) states that management has the duty to bargain on appropriate arrangements for employees adversely affected by management's exercise of its authority. The Federal Labor Relations Authority has held that the legislative history of section 7106 makes it clear that an exclusive representative is authorized to negotiate on such matters as procedures and appropriate arrangements except to the extent that the establishment of such procedures or appropriate arrangements would preclude the agency from acting at all. *See, e.g., American Federation of Government Employees, AFL-CIO and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 2 FLRA 603 (1980), *enforced sub nom. Department of Defense v. Federal Labor Relations Authority*, 659 F.2d 1140 (D.C. Cir. 1981), *cert. denied sub nom. AFGE v. FLRA*, 102 S.Ct. 1443 (1982); *American Federation of Government Employees, AFLCIO, Local 1999 and Army-Air Force Exchange Service, Dix-McGuire Exchange, Fort Dix, New Jersey*, 2 FLRA 152 (1979), *enforced sub nom. Department of Defense v. Federal Labor Relations Authority*, 659 F.2d 1140 (D.C. Cir. 1981), *cert. denied sub nom. AFGE v. FLRA*, 102 S.Ct. 1443 (1982); *National Treasury Employees Union and NTEU Chapter 61 and Department of the Treasury, Internal Revenue Service, Albany District, New York*, 7 FLRA No. 47 (1981).

### 1-4. Effect on Negotiations at the Local Level

a. What does all this mean to the local activity's negotiation team? With the scope of negotiations as broad as it is, management will face few proposals that are totally nonnegotiable. However, management may find that it neither wishes to negotiate over many of these -negotiable- proposals nor has an acceptable counterproposal to offer.

b. The duty to bargain in good faith is mandated by law. This duty means that the local parties are willing to sit down and explain their positions, consider the other party's arguments and attempt to work out compromises. It is important to note that the requirement to bargain in good faith does not compel either side to agree to a proposal or to make a concession (see 5 USC 7103(a)(12)). In any negotiation situation, each side will have certain matters which are so important to it that it cannot compromise on them in negotiations. When in the course of bargaining, one party refuses to agree to a proposal and the other party refuses to make a concession, the parties are said to be at impasse.

### 1-5. Causes of Impasse

There are a number of reasons why impasses arise at the negotiating table. There may be political pressure on either or both sides not to agree. For example, the union team may be using “model” language from the national headquarters and is wary of agreeing to anything less than that language. Management's team may be under orders not to give in on

a particular proposal no matter what. There may be fundamental disagreement on key issues. The negotiators on either or both sides may be inexperienced and, therefore, hesitant to agree to anything, lest they give away the store. It may be that the bargaining strategy being used by one of the parties is not to agree to anything. If this is the case, an unfair labor practice charge based on the failure to bargain in good faith could be used to thwart such a strategy. The impasse may be due to personality problems on the part of the chief negotiators. One party may believe it is in a minimal risk position and there is no need to reach a settlement. Such a belief may be based on its knowledge of how the Federal Service Impasses Panel has ruled on a particular issue in the past. Finally, the parties may conceptually agree but have language problems, i.e., they can't agree on how to word the provision.

### **1-6. Statutory Framework for Resolution of Impasses in the Federal Sector**

a. Even with conscientious efforts on the part of both parties, it is recognized that negotiation impasses may occur. When such problems arise at the bargaining table, Congress has provided for third party intervention. Title VII of the Civil Service Reform Act (CSRA) has established a statutory basis for labor-management relations in the Federal service. Depending on the problem that arises at the table, Title VII provides for the use of the services of the Federal Labor Relations Authority, the Federal Mediation and Conciliation Service, or the Federal Service Impasses Panel. The role of each of these three organizations is as follows:

1. **THE FEDERAL LABOR RELATIONS AUTHORITY** —The FLRA is empowered to settle negotiability *disputes* (not impasses) which arise at the table. When the activity alleges that the duty to bargain in good faith does not extend to a certain matter, 5 USC 7117 provides that the union may appeal the allegation to the Authority. The Federal Labor Relations Authority's decision on the negotiability of a proposal is final and binding on the parties, though either side may seek judicial review.

2. **THE FEDERAL MEDIATION AND CONCILIATION SERVICE** —FMCS was created in 1947 as an independent agency for the purpose of helping parties in the private sector resolve negotiation disputes. Executive Order 11491 extended its jurisdiction to Federal sector labor relations. Title VII continued the use of FMCS assistance in the Federal sector. 5 USC 7119 states that the FMCS will provide its services and assistance to resolve negotiation impasses. The Federal Mediation and Conciliation Service determines when and how its services will be provided.

3. **THE FEDERAL SERVICE IMPASSES PANEL** —The FSIP is an entity within the Federal Labor Relations Authority established for the purpose of helping the parties in a negotiation impasse reach agreement. In accordance with 5 USC 7119, the services of the Federal Service Impasses Panel may be requested by either party only after voluntary arrangements, including the services of FMCS or any other third party mediation, fail to resolve the impasse.

b. When the local activity makes an allegation of non-negotiability of a matter to the union and the union, in accordance with 5 USC 7117, appeals to the FLRA, the agency statement of position is prepared by Headquarters, DA for submission to the Authority. However, when the services of FMCS and/or FSIP are required, the local activity deals directly with one or both agencies. Therefore, this pamphlet will focus on the functions of FMCS and FSIP and how to use their services effectively.

## **Chapter 2 The Mediation Process**

### **2-1. Rules Governing Mediation**

a. The regulations which govern the Federal Mediation and Conciliation Service's role in Federal sector labor relations are found in title 29 of the Code of Federal Regulations (CFR), Part 1425. In addition, the Code of Professional Conduct for Labor Mediators can be found as an appendix to 29 CFR 1400. The only reference to FMCS in Title VII of CSRA is found in section 7119 of the Statute.

b. Section 1425.2 of title 29 of the CFR provides that parties entering into negotiations for an initial agreement will file a notice with the FMCS within 30 days after commencing the negotiations. At least 30 days prior to the expiration or modification date of an existing agreement, the party initiating negotiations will file a notice with FMCS. Parties engaging in mid-term or impact bargaining need not submit a notice. FMCS Form F-53 (Notice to Federal Mediation and Conciliation Service) may be used and should be submitted in duplicate to Federal Mediation and Conciliation Service, 2100 K St. NW, Washington, DC 20427. A copy should be served on the opposing party. A copy of FMCS Form F-53 is located at the back of this pamphlet and will be locally reproduced on 8 1/2 x 11 inch paper.

c. 29 CFR 1425.3 describes the functions of the Service under Title VII. Basically, it is up to the Service to determine whether or not the need for mediation exists. Moreover, at any time the Service may set a time limit on its participation. At the end of the specified time limit, the Service may make suggestions for settlement and if the suggestions are not accepted by the parties, the Service may refer the matter to the Federal Service Impasses Panel. The technique of suggestions for settlement has not often been used by FMCS.

d. It is the duty of the parties, in accordance with 29 CFR 1425.4, to participate fully and promptly in any meeting arranged by the Service. While participation in mediation is required, the parties are under no obligation to agree to anything. Moreover, it should be noted that, in accordance with the code of Professional Conduct for Labor Mediators,

emphasis is placed on the need for the parties to voluntarily settle their problems. Improper pressure on the part of the mediator which prevents or precludes voluntary action by the parties is not appropriate.

*e.* The Code of Professional Conduct for Labor Mediators precludes the mediator from disclosing confidential information in a legal proceeding or to others for any purpose. Furthermore, bargaining positions and proposals provided by one party, in confidence, to the mediator for his or her information only are not to be disclosed to the other party without permission.

*f.* 5 USC 7119(a) provides for the use of FMCS to resolve negotiation impasses. It is important to note that FMCS has no binding authority over the parties. Section 7119(b) requires the utilization of third party mediation prior to requesting the Federal Service Impasses Panel to consider the matter. Thus, before FSIP will assert jurisdiction over a matter it requires certification by FMCS that the parties are at impasse.

## **2-2. The Mediator**

*a.* Mediators have but one goal—contract settlement. They single-mindedly pursue this goal. Their most important asset is impartiality which is essential for them to be effective. They are not concerned with whose position is right or wrong but rather with how to achieve a settlement. To deal effectively with mediators, it is important to understand the strengths and weaknesses they bring to the negotiation process.

*b.* The mediator is skilled in the art of negotiations. Mediators, as a rule, have had several years of experience at the bargaining table as negotiators for either labor or management. Because of this hands-on experience; the mediator understands the dynamics of the negotiation process.

*c.* Mediators bring an objective, third party viewpoint to the table. Since mediators are outsiders, they have no vested interest in the outcome of the negotiations. Therefore, they are in a position to objectively take a look at the situation and propose alternatives.

*d.* Mediators will listen to both parties, review their respective positions, analyze their differences and their agreements and suggest options based on their analysis. They may provide approaches which have worked elsewhere.

*e.* Only a small fraction of the labor negotiation disputes handled by FMCS each year involve Federal sector labor relations. The majority of disputes are from the private sector. Therefore, mediators probably have little familiarity with the rules and regulations governing the Federal sector. Hence, they may be unaware, for example, that a proposal violates a certain section of the Federal Personnel Manual.

*f.* Mediators are not concerned with whether a proposal is negotiable or nonnegotiable. They are probably unaware of negotiability decisions issued by the FLRA. Nor is it the mediator's job to know what is negotiable or what is nonnegotiable. That job is left to the parties. The mediator's only concern is reaching settlement; therefore, he or she doesn't want to hear that a proposal is nonnegotiable. (See para 2-5 on dealing with nonnegotiable proposals at mediation).

*g.* The mediator does not keep score. Just because management gives in on four proposals does not mean the mediator will exert pressure on the union to give in on four proposals. If mediators believe they can get management to give in on more proposals they will seek to do so. Remember mediators want to reach a settlement—they don't have to live with the agreement but the parties do. In fact, one of their arguments will probably be that a proposal should be tried out and if management doesn't like it, management can change it in three years when the agreement is up for renegotiation. (More on this and other mediator tactics later).

## **2-3. The Mediator's Techniques**

With the goal of contract settlement always in mind, the mediator will employ a number of techniques to reach agreement between the parties.

*a.* SEPARATION OF THE PARTIES—This is favorite technique of the mediator. When emotions are running too high and both sides are entrenched, this device serves to relieve tensions. Once separated, the mediator will give each of the parties a chance to let off steam, thus defusing their hostility. Having released some of the tension that has built up, the mediator can then begin to explore the reasons for the stalemate between the parties. If it appears that the strain in relations between the two parties is too great to make a resumption of joint negotiations productive, the mediator may carry on most of the mediation process shuttling between the separated parties.

*b.* GENERATING UNCERTAINTY—The mediator may challenge the validity of each side's position on a given matter. The purpose of this ploy is to get each side to rethink its position and make both sides see the other's view of the problem.

*c.* DEALING WITH INDIVIDUAL NEGOTIATORS—After initially meeting with both teams separately, the mediator may choose to deal solely with the chief negotiators for both sides. There are several reasons why this approach may be chosen. One reason would be that the size of the team is too big and unwieldy, so as to preclude effective bargaining. Another important reason may be that the mediator perceives that the chief negotiators for both sides might readily reach agreement absent pressure from their respective teams to hold firm.

*d.* MARATHON BARGAINING SESSIONS—The mediator may adopt the tactic of abandoning the ground rules agreed to by the parties. He or she may insist that the parties meet for hours on end and at times other than those set in

the ground rules. Night sessions and/or sessions on the weekends may be held. The strategy is to wear out the parties so they will agree in order to be able to go home.

*e. SETTING A TIME LIMIT*—A time limit may beset by the mediator after which he or she will no longer meet with the parties. Since there are no negotiation deadlines imposed on the parties in Federal sector labor relations (unlike in the private sector where after the current contract runs out the threat of a strike is very real), often negotiations are protracted and aimless. Without deadlines there is little pressure on either side to bargain and compromise. Therefore, the mediator will try to create pressure on the parties, through the imposition of a time limit, to agree.

*f. SENDING THE PARTIES HOME*—Often after meeting with each of the parties, the mediator will discover that neither party has done its homework. If the parties have not come to mediation prepared to offer alternatives, they may be sent home by the mediator to “rethink” their position. Also if both parties come to mediation with a large number of issues yet to be resolved, the mediator may decide to send them back to the table to further discuss the issues before initiating the mediation process.

*g. SUGGESTING ALTERNATIVE SOLUTIONS*—After receiving detailed explanations of the remaining contract issues from both sides, the mediator may offer alternatives or compromises for consideration. It is often likely that the issues dividing the union and management are not unique and have been resolved by the mediator before. Mediators will have a variety of tried and true solutions to offer. Often this technique will be employed by the mediator when management has asserted that a given proposal is nonnegotiable. After getting management to identify why the proposal is illegal, the mediator will devise alternative language to cure the illegality while addressing the issue prompting the proposal. Frequently, the union may have a negotiable demand which, because of its phrasing, is nonnegotiable.

*h. ADVANCING EACH SIDE’S PROPOSALS*—This is one of the major functions of the mediator. Often the parties may be reluctant to advance any alternative or compromise for fear that it not only won’t be accepted but will be viewed as a change in or weakening of support for its bargaining posture. Here the mediator serves an invaluable role. When alerted to such a situation, the mediator can present the alternative to the other side as his or her own proposal for settlement. If the other side appears receptive or if the proposal receives a positive response, the originating party can then formalize the proposal. If the initiative does not appear acceptable, the originating party has lost nothing.

*i. PACKAGING PROPOSALS*—The mediator often encourages both sides to couple proposals, i.e., to give the other side a package deal. Utilizing this technique, one side puts together a package of proposals which gives concessions to the other side on some points in return for acceptance by the other side of some matters important to the first party.

*j. TRADE-OFFS*—Similar to the technique of packaging proposals is the trade-off approach. The mediator may suggest that if the union is willing to give management proposal x then management will give the union proposal y.

*k. TRIAL TEST/STAGED IMPLEMENTATION*—When one party is seeking to establish a new practice or make a change in an existing practice which the other party opposes, the mediator may suggest either a trial test or staged implementation.

— Trial Test— If the union was seeking to have flexitime established at an activity and the activity opposed flexitime because it perceived potential problems in the administration of such a program, the mediator might suggest a trial of flexitime at the activity for six months. At the end of six months, the issue could be renegotiated with both sides in a better position to understand the impact of a flexitime program at the activity.

— Staged Implementation— Another approach would be a staged implementation. Flexitime could be tried in one work area, then expanded to include another area, and then another with the understanding that at any point during the staged implementation either party could halt the implementation and renegotiate the issue.

*l. THREATS*—The mediator may employ threats on either or both parties to get agreement. He or she may imply to one side that if the dispute is certified to the FSIP for resolution the FSIP will rule in favor of the other party, The mediator may also indicate that if certain concessions aren’t made, he or she will step out of the picture without certifying that the parties are at impasse so that the dispute can be presented to the FSIP for resolution:

## **2-4. Resisting Mediator Pressure**

It should always be remembered that the mediator’s sole purpose is to get agreement — not to protect management’s rights. While certain of the techniques employed by the mediator are useful to both sides, some tactics should be resisted.

*a.* Be alert for pressure from the mediator. Do not rush into a concession. Remember the mediator cannot impose any settlement since FMCS has no binding authority.

*b.* If you are unhappy with the results occurring after separation of the parties, you can demand that the parties come back together.

*c.* The mediator will look for weak spots in each party’s position— usually one side will tend to spill all the beans. It is essential to maintain team discipline — let one person speak for the team.

- d.* Don't reveal your bottom line to the mediator. Keep something in reserve; mediators expect you to bargain with them.
- e.* If the mediator uses the divide and conquer method, i.e., dealing only with the chief negotiator rather than the whole team, insist on the right for the whole team to confer prior to any decision.
- f.* If you have a valid position, stick with it. Don't let the mediator undermine your position.
- g.* If the mediator insists on a marathon session, remember that you have the right to stop the session at any time. It never occurs to most negotiators that they have this right. Often, they are afraid they will be charged with bad faith bargaining. However, as long as the team is prepared to return to the table at a reasonable time it is not bad faith to quit temporarily because you're too tired to effectively negotiate.
- h.* If management is vehemently opposed to the establishment of a new practice or a change in the existing practice, then don't agree to a trial test/staged implementation. Either approach will include a provision for renegotiation down the road—therefore management is only delaying the inevitable confrontation. Moreover, once a program is started, even on a temporary basis, it is much harder to eliminate or curtail later. A word of caution — if you are not opposed to a new practice but are unsure of its benefits then a trial test/staged implementation is a good way of trying it out.

## **2-5. Preparing for Mediation**

There are certain steps management can take to make effective use of the mediation process.

- a.* **THE MOST ESSENTIAL STEP FOR MANAGEMENT IS TO BE PREPARED.** Insure organizational consensus on bargaining objectives before mediation, formulate alternative proposals, identify where concessions can be made and which proposals you can back off from in mediation. Do your homework.
- b.* Send to the table and to mediation negotiators who have authority to negotiate. Often during mediation the union may revise its position yet management's chief negotiator lacks authority to accept the altered proposal. Substantial progress can only be made if the negotiators have the authority to bargain on questions of strong interest.
- c.* Identify union demands that are nonnegotiable. If possible or desirable develop a negotiable alternative to the proposal. Inform the mediator that the proposal as set forth by the union is nonnegotiable and then present the mediator with the alternative developed. Don't just tell the mediator that a proposal is nonnegotiable. Remember it is DoD and DA policy that the activity is to make every effort to develop and obtain acceptance of a feasible, legal alternative to the proposal whose negotiability is questioned but whose premise is worthwhile.
- d.* Develop package deals for use during the mediation process; identify trade-offs to present to the mediator.
- e.* If the dispute concerns a change in practice or the institution of a new practice at the installation, consider whether or not a trial period or staged implementation approach is acceptable. Know the pros and cons of either approach and be able to defend your decision concerning the feasibility of a trial period or staged implementation.
- f.* Be prepared to bargain and to bargain intensively. Make sure the management team realizes that ground rules are apt not to be followed during mediation and adjustments to schedules may have to be made.
- g.* Ensure everyone on the team understands that the mediator cannot bind either side. No one should view the mediator as a threat — though often the union will "threaten" to call in the mediator if management does not make a concession at the bargaining table.

## **2-6. When Mediation Should be Invoked**

If mediation services are invoked too early in the negotiation process or too late they will not be very effective. The FMCS prefers that the parties, when invoking mediation, have at the most 30 issues open; ideally 15 issues or less should be unresolved. Mediators view an impasse over ground rules to be a waste of time; both FMCS and FSIP maintain that ground rules should be short and to the point covering when, where and how many people will be involved in negotiations.

- a.* Before going to mediation, the parties should go through the various articles of the contract at least once, tabling issues on which agreement cannot be reached. If this has not been accomplished prior to invoking mediation, the parties will not be in a position to utilize package deals, trade-offs, and other mediation techniques.
- b.* If, after reviewing the contract the least once and going over previously tabled issues the parties still are at impasse (i.e., there is no movement on either side), mediation should be invoked. Often the parties will continue to go over the same ground three or four times, making little progress but building up hostility and intransigency. Waiting for a year after entering negotiations to invoke mediation is too long. By then the parties are locked firmly into their positions and the mediator's job becomes very difficult.
- d.* Most of the techniques employed by the mediator could be utilized by the parties themselves. The mediator is most effective if the causes of impasse are personality differences or lack of agreement on how to word proposals. If the parties wait too long after a breakdown in communications before calling in the mediator, hostility will build. Hence, at the point communications fail between the parties, the time is ripe for the use of the mediator's skills.

## **2-7. Mediation, A Stepping Stone to the Panel**

- a.* Too often, the parties go to mediation with only one purpose in mind — to get to the Federal Service Impasses

Panel. Since the Panel will not accept cases that have not been through the mediation process, the parties are forced to go through the motions of mediation to get before the Panel.

b. Frequently, one of the parties will decide that it is in its best interest to bring a matter before FSIP since a review of previous orders by the Panel on the particular matter indicates that the party will probably get its proposal. Therefore, the party is not prepared to engage in bargaining at mediation since it has determined it will prevail at the Panel. Viewing mediation as a stepping stone to the Panel guarantees that the mediator's efforts to help the parties reach agreement will fail. Moreover, it should be noted that FSIP often refers the parties back to the table when there appears to be insufficient bargaining or no real bargaining on the impasse issue(s). Therefore, it is in the best interests of both parties to approach mediation with a willingness to use the process to resolve their disputes.

## Chapter 3

### Taking a Case Before the Federal Service Impasses Panel

#### 3-1. Rules Governing FSIP

a. 5 USC 7119 provides the statutory basis for the operation of the Federal Service Impasses Panel in helping the parties to a negotiation dispute reach agreement. The regulations which govern the Federal Service Impasses Panel are found at 5 CFR 2471.

b. 5 USC 7119(b) provides that the services of the Panel may be requested if voluntary arrangements, to include the services of FMCS or other third party mediation, fail to resolve the impasse. It should be noted that, in accordance with section 7119(b)(2), the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, provided said procedure is approved by the Panel.

c. Section 7119(c) of title 5, United States Code recognizes the Panel as an entity within the Federal Labor Relations Authority. The Panel is composed of a Chairman and at least six other members, appointed by the President. Normally, the Panel members serve a five year term though any member may be removed by the President. The Panel members serve on a part-time basis, usually meeting once every four weeks to review cases and issue decisions.

d. 5 USC 7119(c)(4) provides that the Panel may appoint an Executive Director and other staff to assist it. The staff normally handles the processing of cases up to the point of decision by the Panel. The staff will recommend to the Panel whether to accept jurisdiction over the case and which procedure should be utilized. If a factfinding hearing is to be conducted, a staff member may be assigned as the hearing officer. The staff member may then prepare a recommended resolution of the negotiation impasse for the Panel's consideration.

e. Since a large amount of the case processing is handled by the Panel's staff, the size of the staff will influence the type of procedure(s) employed by FSIP for dispute resolution. FSIP favors factfinding hearings; however, when staff resources are limited, written submissions or binding arbitration are frequently utilized.

f. Section 7119(c)(5) of title 5 of the United States Code provides that upon a request to the Panel for consideration of an impasse, the request must be promptly investigated. At this point the Panel must decide whether to assert jurisdiction. If the Panel takes jurisdiction of the impasse, it must either recommend procedures for the resolution of the dispute or directly assist the parties through factfinding or other methods of dispute resolution. If after such assistance, the parties still do not arrive at a settlement, the Panel under 5 USC 7119 (c)(5)(B)(iii) is empowered to take whatever action is necessary to resolve the impasse. Typically this is a decision and order which, in accordance with section 7119(c)(5)(c), is bidding upon the parties during the term of the agreement. It is important to note that under section 7119(c)(5)(c) even after a binding order is issued by the panel, the parties may go back to the table and agree otherwise.

g. Under 5 CFR 2471.1, either party, or the parties jointly, may request the Panel to consider the impasse. FLRA Form 14, (Request for Assistance), may be used to request FSIP either to consider a negotiation impasse or approve a binding arbitration procedure for resolution of the negotiation impasse. A copy of FLRA Form 14 is located at the back of this pamphlet and will be locally reproduced on 8 1/2 x 11 inch paper.

h. Any request to the Panel to consider an impasse must be in writing and, in accordance with 5 CFR 2471.3, contain the following information: identification of the parties and individuals authorized to act on their behalf; statement of issues at impasse and a summary of the positions of the parties with respect to those issues; and information concerning the number, length and dates of negotiation and mediation sessions held. The FSIP prefers a joint request by the parties, though it is not required. The proposals in question should be in clear understandable form. Too often proposals submitted to the FSIP are vague, incoherent and unintelligible. Let this be the union's mistake! If either or both parties has a preference to the type of procedure they would like to have the Panel utilize in settling the impasse, it should be stated with the party's reason for so preferring.

i. If the parties *jointly* agree that they wish to invoke binding arbitration to settle the impasse, the request to the Panel for approval of a binding arbitration procedure must be jointly filed. In accordance with 5 CFR 2471.3, the request should contain the following: identification of the parties and individuals authorized to act on their behalf; brief description of issues at impasse to be submitted to the arbitrator; number, length and dates of negotiation and mediation sessions held; statement that the proposals to be submitted to the arbitrator contain no questions concerning the duty to

bargain; and a statement concerning the arbitration procedures to include type of arbitration (e.g., mini-arbitration, medarb, etc.), arrangement for paying for the proceeding (e.g., splitting of costs) or, in the alternative, those provisions of the parties' labor agreement which contain this information. Under no circumstances, where there is a negotiability dispute over a proposal should a binding arbitration procedure be adopted. Negotiability disputes are to be settled in accordance with the procedures provided in 5 USC 7117.

*j.* It is possible that the parties could negotiate an article into their agreement concerning the resolution of impasses between the parties. FSIP normally will not approve binding arbitration for impasse resolution on a general basis but rather requires that the parties on a case-by-case basis request authorization from FSIP to invoke arbitration to settle an impasse.

*k.* The use of an outside arbitrator to settle negotiation impasses is known as "interest arbitration." Generally, there is little to be gained from the services of an interest arbitrator since the same services can be obtained from FSIP at no cost to the parties. However, in some circumstances where time is of the essence and a quick resolution of the impasse is needed, the speed of interest arbitration as well as the fact that the parties can choose their own arbitrator make this alternative attractive.

*l.* All requests to the Panel for assistance should be directed to Executive Director, Federal Service Impasses Panel, 500 C St. SW, Washington, DC 20424. When filing a request for Panel assistance and/or submitting a response to such request, an original and one copy is to be filed with the Panel, one copy is to be served on the other party to the dispute and one copy with the Mediation Service. A statement of such service is to be filed with the Executive Director. (AR 690-700, chap 711.4-3b requires that a copy of any referral to the FSIP be provided to the major command.)

*m.* Upon receiving a request, the Panel's staff will conduct an investigation to include consulting with the parties and FMCS. After review of the impasse, the Panel will decide whether or not to assert jurisdiction. The Panel may decline to assert jurisdiction when it finds the parties have not spent enough time at the table. If the case involves negotiability issues, the Panel may or may not decline to assert jurisdiction. The Panel will review the negotiability declarations to see if they are frivolous. If it finds they are, it will assert jurisdiction and issue decisions on the negotiability issues. In accordance with AR 690-700, chapter 711.4-2c, whenever a negotiability issue is raised at the FSIP, HQDA (DAPE-CPL) is to be notified so that guidance may be provided to the activity concerning further proceedings before FSIP. Moreover, if the Panel imposes a settlement on the parties and the activity believes that the settlement contains a non-negotiable provision, HQDA (DAPE-CPL) should be contacted immediately.

*n.* If the Panel decides to assert jurisdiction, it will decide which procedure to utilize. The various methods are described in paragraph 2 of this chapter.

*o.* Upon receipt of a request for approval of binding arbitration, the Panel staff member will conduct an investigation and either approve or disapprove the request. If the request is made pursuant to an agreed upon procedure for arbitration of impasses contained in an applicable negotiated agreement, the Panel may use an expedited procedure providing for approval/disapproval of the request within 5 workdays.

*p.* If the Panel determines that a hearing is appropriate, it may appoint a staff member to conduct the hearing and, pursuant to 5 CFR 2421.7, issue a notice of hearing and a notice of prehearing conference.

*q.* The conduct of the hearing and prehearing conferences are discussed in section 2471.8 of title 5, Code of Federal Regulations. Subsequent to the hearing, a written report is normally issued and contains recommendations if authorized by the Panel. The report is served on the parties. If the report does not contain recommendations, the Panel will then take whatever action it deems necessary in accordance with 5 CFR 2471.9.

*r.* After receipt of a report containing recommendations by the Panel or its authorized representative, each party, upon conferring with the other, will accept the recommendations and so notify the Executive Director; reach a settlement of all unresolved issues and submit a written statement to the Executive Director; or submit a written statement to the Executive Director setting forth the reasons for not accepting the recommendations and for not reaching a settlement of all unresolved issues. All information provided the Executive Director must be in duplicate along with a statement of service showing that a copy has been served on the other party.

*s.* If the parties do not arrive at a settlement, 5 CFR 2471.11 authorizes the Panel to take whatever action is necessary and not inconsistent with 5 USC 7119 to resolve the impasse to include directing the parties to accept as binding the Panel's decision. In ordering final action, the Panel may determine to hold a hearing. After notice of final action by the Panel, each party must, within 30 days of receipt of notice, send to the Executive Director evidence of compliance with the decision. All papers submitted to the Executive Director must be in duplicate along with a statement of service showing a copy has been served on the other party. Any final action directed by the Panel is binding on the parties during the term of the agreement, unless they otherwise agree. Failure to implement an impasse decision is a basis for an unfair labor practice charge in accordance with 5 USC 7116(a)(6) and 5 USC 7116(b)(6).

### **3-2. FSIP Methods for Impasse Resolution**

*a.* The Panel has broad authority to resolve negotiation impasses. The Panel encourages both parties to agree upon the procedure to be utilized. If they cannot agree, the Panel will choose the method to resolve the impasse dispute. Such procedures may include factfinding followed by recommendations and/or decision and order; written submissions

followed by recommendation and/or order; outside arbitration; final offer selection; and med-arb. A description of each of the procedures is provided below.

(1) **FACTFINDING**—If factfinding is deemed appropriate, a hearing will be held. The hearing's purpose is to establish a complete record of the issues in dispute and the positions of the parties with respect to them. A staff representative of the Panel may be designated to serve as a factfinder and hold the hearing. At the prehearing conference, the representative will assist the parties in preparing for the hearing and will also explore possibilities for settlement. The hearing usually lasts no more than 2 days and post-hearing briefs may be submitted. After the conclusion of the hearing and submission of any briefs, the factfinder will issue a report, summarizing the evidence and arguments on the issues at impasse and the various proposals of the parties. The report may or may not contain recommendations. A copy of the report is served on each of the parties and is forwarded to the Panel.

— *Report with Recommendations* – The Panel may authorize the staff representative to make recommendations. After receiving the factfinder's report, the Panel may make its own recommendations. Whether the factfinder or the Panel itself make recommendations, the parties have 30 calendar days after receipt of the recommendations to reach an agreement before further action is taken by the FSIP.

— *Decision and Order* – Instead of, or in addition to making formal recommendations for decision, the FSIP may elect to issue a decision and order after the factfinding hearing. Such actions are final and binding on the parties unless they otherwise reach agreement.

(2) Paragraph not used.

b. The Federal Service Impasses Panel prefers to be unpredictable in order to discourage the parties from utilizing its services rather than settling their own disputes. Therefore, the parties may not be told in advance which of the factfinding procedures (i.e., recommendations or decision and order, or combination thereof) will be employed in the impasse dispute.

(1) **WRITTEN SUBMISSION** — This procedure allows each side to submit documentation in support of its position. The Panel then makes its decision on the basis of the record established. Usually, both sides exchange written statements of their respective positions with supporting argument and evidence. Then they may be given the opportunity to revise their proposals before exchange of rebuttal briefs. Based on the written material received, the Panel will make recommendations for settlement and/or issue a binding decision for resolution of the dispute.

(2) **OUTSIDE ARBITRATION** — The Panel may recommend and/or order the use of an arbitrator in the parties' dispute. Additionally, the Panel may order resumption of negotiations for a specified period of time, under a concentrated schedule for bargaining, after which any unresolved issues will be submitted to an arbitrator for resolution. In all cases, the parties select the arbitrator and pay the fees involved in the arbitration of the impasse.

(3) **FINAL OFFER SELECTION** — This procedure also known as "last best offer" has been used by the Panel in connection with the receipt of a factfinder's report or the parties' written submissions. This method limits the Panel's settlement of the impasse to selection of either one or the other party's final proposal. When choosing between final proposals, the Panel may decide the dispute on a package or issue-by-issue basis. Thus, pressure is put on the parties to draft reasonable proposals. Normally, the Panel, if it uses this method, will advise the parties in advance. The parties may be allowed to change their offers during the process and will be notified as to whether the Panel will be selecting from the final proposals on a package or issue-by-issue basis. The Panel will often use this approach since it maintains that it prefers to leave the parties' language alone. If final offer selection is used, it is essential that management write reasonable proposals in a clear, concise form to insure adoption.

(4) **MED-ARB** — This method provides a neutral third party with authority to mediate the dispute and then to make a binding award on those issues not resolved during the mediation phase. The neutral third party may be a staff member of the Panel or an outside arbitrator. If an outside arbitrator is to be used, then as in the case of grievance arbitration, the parties select their mediator-arbitrator and pay his or her expenses.

c. The procedure adopted for settlement of a dispute depends on several factors. The nature and number of issues involved, the need for quick resolution of the impasse, and the caseload and staff resources of the Panel influence the method employed. The Panel has in the past preferred to use conventional factfinding. However, if staff resources are limited, this method is not utilized since it is very time consuming and can be expensive. A hearing usually is scheduled for 35–40 days after the Panel takes the case, with a final recommendation and/or decision taking about 6 months from assertion of jurisdiction.

d. When staff resources are limited, written submissions are utilized in those cases where the number of issues in dispute are few. Normally resolution of an impasse utilizing this procedure takes approximately three months. If there is a large number of issues in dispute, the Panel may elect to send the parties back to the table for a specified period of time and then to an outside arbitrator or recommend/order med-arb. The arbitration method of impasse resolution is the quickest approach.

e. It should be noted that the Panel may use a combination of the above-mentioned procedures. For example, factfinding may be coupled with written submissions resulting in a final offer selection. Since the policy of the Panel is

to push parties into settlement bilaterally so as not to encourage them to come to the Panel, it attempts to be unpredictable as to which procedure it will impose.

### **3-3. Prehearing Conference**

*a.* Where the Panel uses the factfinding procedure, a prehearing conference is held a few days before the factfinding hearing. It is an informal meeting between the parties' representatives and the factfinder. The prehearing serves as a dress rehearsal for the union and employer representatives. The purpose of the hearing and the procedures to be followed are outlined. Among the matters discussed are the possibilities of written stipulations of fact being submitted, the position of the parties on each of the issues, and the witnesses to be called and exhibits to be submitted.

*b.* Thus, prior to the prehearing conference, management should have defined the issues involved, outlined its case and identified and prepared its witnesses, know what each witness is expected to testify to, and also prepared its exhibits and know what each exhibit is designed to show. The way to win at the Panel is to be prepared. One exhibit required will be the proposals/issues the parties have already agreed to. Management should have its final proposals clearly written, insuring any acronyms are defined, and that the proposals are clear on their face. Both parties should try to stipulate to as many facts as possible. If stipulation of information can be worked out, the length of the hearing will be substantially reduced. The discussion by the parties of their proposals, evidence and witnesses at the prehearing conference is to insure that there are no surprises at the hearing itself.

*c.* There are many items the parties should be able to stipulate to, to include the following:

- mission of the organization
- description of the bargaining unit
- date on which exclusive recognition was granted
- number of prior contracts
- description of other bargaining units and related labor contracts, if any
- number, dates, and length of negotiation and mediation sessions
- summary of proposals made by the parties when negotiations began
- description of issues resolved, and how resolved (i.e., how many union proposals were adopted, how many management proposals were adopted, etc.)
- description of issues yet to be resolved.

*d.* As previously stated, the Panel's goal is to push the parties into a bilateral settlement of their dispute. Therefore, the factfinder, at the prehearing conference, will exert intense pressure on the parties to settle and may even mediate between the two parties. It is, therefore, essential that management know its "bottom line" before the prehearing conference. If the Panel staff member thinks there is any hope that the parties can settle the dispute between themselves, the parties will be kept at the hearing conference and the actual hearing may even be postponed to allow the parties more time to settle.

### **3-4. Hearing**

*a.* The hearing while formal is nonadversary in nature. Its purpose is to develop a full record on the issues in dispute and the respective positions of the parties. Each party has the right to be present and be represented by an attorney or other representative. The factfinder will take evidence through the use of stipulations, the testimony of witnesses and, submission of exhibits. All exhibits are to be submitted in duplicate, with a copy for the other party; therefore a total of four copies of each exhibit will be needed. Exhibits that should be presented include:

- most recent labor agreement
- copies of proposals made by the parties in attempting to resolve the various impasse proposals
- statistical analyses, graphs, and charts, if applicable
- copies of relevant laws, rules, regulations, court decisions and arbitration awards,

*b.* Witnesses should be prepared in advance by management. They should be able to testify as to the actual negotiations that took place, the concessions made at the table and the reasons for management's stand on the impasse issues. It is essential that witnesses be prepared in advance by management's representative so as to be familiar with the testimony of each witness. There is no need for duplicative testimony.

*c.* The employer should be prepared to go first. Opening statements are required. If there are three issues in dispute an opening statement for each issue should be prepared. Closing statements are encouraged. They provide the parties with the opportunity to review the evidence presented in order to determine if they proved what they said they would in their opening statement. Again if there are three issues in the case, a closing statement for each issue should be prepared. The technical rules of evidence do not apply. Normally there are only two grounds for objection: relevancy and undue repetition. While cross examination, redirect and recross of witnesses are allowed, normally they are not necessary. Moreover, according to FSIP, these methods are ineffectively used since the nature of the proceeding is nonadversary.

*d.* There is no burden of proof at the hearing. The only exception is if the issue in dispute involves changing a past

practice. Then the burden is on the party wanting the change to explain what the past practice has been and why it needs to be changed. During the hearing, which is usually open, the factfinder may determine to call and/or question witnesses. An official reporter will make a transcript of the hearing. If either party wishes a copy of the transcript, it may purchase the transcript from the reporter or may examine the transcript at the Panel's office. If the parties wish to submit briefs after the close of the hearing, they normally are required to do so within two weeks after the transcript is received.

e. After receipt of the transcript and briefs, if any, the factfinder will develop a report. It will contain findings of facts based on the record established during the hearing. A copy of the report will be sent to each of the parties.

### **3-5. Written Submissions**

a. If the approach adopted by the Panel is written submissions, there is a format that should be followed in the preparation of management's submission. Basically, the written submission is a brief with attachments, to include exhibits and/or affidavits.

b. The written submission of the activity should contain:

- an introduction,
- summary of issues at impasse,
- actual proposals on the issue at impasse,
- a summary of the arguments,
- the arguments in support of the agency's position,
- a conclusion, and
- any attachments.

c. The introduction serves to provide the Panel with the background to the dispute. The mission of the activity, a description of the parties (i.e., the bargaining unit at the activity and the activity), a description of when negotiations began, how many sessions were held and when mediation was invoked should be provided as a minimum. The introduction should be followed by a short summary of the issues at impasse. Next, the actual contractual language in dispute should be quoted. If the activity's arguments are lengthy, then a summary of the arguments should precede the actual presentation of the activity's position and arguments in support of said position. The activity may provide evidence (in the form of attachments to the written submission) such as charts, graphs, and affidavits from witnesses. Each attachment should be explained in the argument section. If material has previously been submitted to the Panel, it need not be resubmitted but can easily be incorporated into the submission by reference. The conclusion need be no more than a sentence or two requesting the Panel to adopt *in toto* the activity's proposals.

### **3-6. Persuasive Arguments**

a. There are four basic criteria which the FSIP look at in determining which party's proposal(s) should be adopted. Arguments for management's position should be formulated to include one or more of these criteria in support of each proposal at impasse. The four criteria are: comparability, bargaining history, demonstrated need, and past practice.

(1) **COMPARABILITY** — How does the proposal in dispute compare to provisions that exist in other contracts? Does the proposal conform to the intent of Congress and does it comply with the plain language of the CSRA? To previous decisions of FSIP or FLRA? Data can be based on what is being done at other activities within the command, DA, and/or the Federal government. Arguments can also cite what is being done in the private sector. (For an example of how private sector practice can be utilized see appendix B — Sample Arguments, para B-1, Stays of Actions). Comparison can be made to other occupations and employees, e.g., how this proposal is different from the procedure applied to nonbargaining unit employees. Data may be based on geographic area (i.e., compared to all Federal activities in a given geographic location). A comparability argument can be very persuasive in getting the Panel to adopt your proposal.

(2) **BARGAINING HISTORY** — The FSIP will look at the input made by each party to each issue. It is essential to provide as complete a bargaining record as possible. The bargaining movement made by each party will be examined to include how often the parties met, how many and what kinds of counterproposals were made. The bargaining history reviewed by the Panel will include those proposals not in dispute. Additionally, the consequences of the proposals will be looked at and should be presented. Finally the Panel will want to know: Has this proposal been lived with before? If so, what were the effects of the proposal on the parties? In trying to show movement in bargaining history, the activity can base its argument on the history of the entire contract, the issues, or the particular article from which the disputed proposal comes. Any history presented should include initial proposals, counters and the outcome. There is no need, however, for an elaborate bargaining history. Any such argument should be concise.

(3) **DEMONSTRATED NEED** — Why does management need to adopt this particular proposal? In supporting demonstrated need, management should discuss the effect of the proposal on technical or administrative operations, supervision, etc. Is the proposal necessary or just nice to have? Direct/indirect costs should be compared to possible benefits to accrue to each side if the proposal is adopted. Do the costs outweigh the benefits? What problem is the proposal trying to solve? What's wrong with the other party's proposal? Is the proposal fair and equitable to

employees? Evidence to support demonstrated need argument should include charts, graphs, and/or affidavits. A chart showing the costs of the proposal to the activity can be very effective in persuading FSIP not to adopt a union proposal.

(4) PAST PRACTICE — What has been the past practice of the parties? Copies of old contracts memos of understanding, local regulations, etc. can be introduced as evidence of past practice. If management is seeking to change a past practice, it is essential that the problems created by the past practice be explained.

b. There are various sources you can go to in order to develop the data to support your arguments based on comparability, demonstrated need, past practice and bargaining history. Some of these sources are:

- Testimony of witnesses — There is nothing to prevent the agency from submitting affidavits with its written submissions if there is no hearing.
- Labor Agreement Information Retrieval System (LAIRS)— This is a computerized system that allows retrieval of information contained in contracts within DA, DoD, and the Federal government. FSIP has indicated that the parties often fail to use this service. For example, it can provide information on how many DA agreements contain a negotiated grievance procedure which excludes EEO matters. More information on how to use the LAIRS system is contained in the following paragraph.
- Cost analysis —The Comptroller of your organization should be able to provide cost analysis arguments and graphs for submission.
- Previous FSIP decisions — While the Panel stresses its decisions are not precedential in nature, they can still be used as source material for management's arguments.
- Surveys —If the union agrees, you may want to survey bargaining unit members concerning the proposal. Also you may want to survey management and provide information from such a survey on the problems envisioned if a union proposal is adopted.

### 3-7. Using LAIRS

a. The Labor Agreement Information Retrieval System is a computerized information system developed and operated by the Office of Labor-Management Relations of the Office of Personnel Management (OPM). The file is composed of data extracted from Federal labor agreements, third party determinations and statistical reports submitted regularly by Federal agencies. The service which is important to activity negotiators is the customary and special computer searches of collective bargaining agreement provisions. There is a fee for the use of the service but HQDA maintains a subscription with OPM. Any MACOM or activity desiring to utilize the service should request the information through channels.

b. To aid Headquarters, DA in preparing the search request, certain information should be provided:

- *A narrative description of the information desired.* To aid in determining the information available, a subject classification listing by categories is provided at appendix C. This listing should be used in describing the information desired.
- *A description of the data base from which the information is to be extracted.* Will your comparison be based on Federal-wide data? If so you will want a search of the entire agreement file. Will your comparison be based only on DA-wide data? Then you should request a search of all agreements within DA.
- *Geographical area to be searched.* Do you wish to have the search be nation-wide? State-wide? OPM Region-wide? You can even request a citywide search.

c. In addition, if the activity desires extracts of the particular provision, it can obtain a copy of each clause from the agreements that contain the particular provision.

d. Let us assume that the activity and the union have reached an impasse over how arbitration costs will be split. The activity is seeking to negotiate into the agreement a provision whereby the loser pays all. It believes that such a provision is common throughout the Federal Government. A sample request might read as follows:

(1) Search all agreements in LAIRS to determine how many contain a provision for binding arbitration in which the arbitrator costs are paid by the losing party. List the name of the activity, the union, and the state for each agreement. Forward a copy of each arbitration clause from the agreements listed.

(2) Paragraph not used.

e. Searches can be limited in a number of ways. They can be limited to DA activities within a particular state, city or OPM region. They can be restricted to a particular union, or to a particular union within DA. Searches can also be narrowed so as to include agreements covering bargaining units composed of only WG, or WG and GS, or professional employees. Searches can be limited to all agreements negotiated over the last two years. It is each activity's responsibility to determine the proper search needed. If in doubt, a Federal-wide search should be made with a request to provide a listing of the names of the activity, the union and the state for each agreement provision. The activity can then analyze the information and develop the most favorable comparability argument.

f. For example, if a Federal-wide search is requested on agreements containing a provision for binding arbitration with the loser paying all costs, analysis of the data provided may show that while this provision is not widely used

throughout Federal Government it is utilized in many contracts negotiated by DA. To find out the percentage of DA contracts which contain the provision, the activity negotiator should use a LAIRS publication entitled *Union Recognition in the Federal Government* which provides statistical summaries on agreements and an installation-by-installation listing of union agreements. A copy of this publication, which is updated yearly, may be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

### **3-8. General Considerations**

Preparation cannot be overemphasized. The more prepared you are to present your case the better off you will be. Proposals should be carefully drafted, using good English, and should speak for themselves. Don't write proposals in such a way as to preclude the Panel from selecting them. Evidence in support of arguments is essential. Comparability arguments will help you win at the Panel. If you allege that a proposal is nonnegotiable because of a DA/DoD regulation you must assert that the regulation has a compelling need. It is up to management to support its arguments. Merely saying that the other side's proposals are unacceptable will not win the case. Management must present a logical, persuasive case that its proposals should be adopted.

## **Appendix A**

### **Title not used**

#### **Section I**

##### **Required Publications**

This section contains no entries.

#### **Section II**

##### **Related Publications**

This section contains no entries.

#### **Section III**

##### **Prescribed Forms**

This section contains no entries.

#### **Section IV**

##### **Referenced Forms**

This section contains no entries.

## **Appendix B**

### **Sample Arguments**

The following are illustrations of arguments that can be made for or against a given proposal and which apply at least one of the four criteria previously mentioned, i.e., comparability, past practice, bargaining history, and demonstrated need. These are illustrations only and do not reflect actual data.

#### **B-1. Stays of Actions**

*a.* Union Proposal — Employees who are the subject of a disciplinary or adverse action may be permitted to stay the action pending final resolution of all appeals.

*b.* Activity Proposal — Employees who receive a disciplinary or adverse action will process their grievance through the expedited grievance procedure, or may file an appeal.

*c.* Activity Argument — An avowed purpose of the Civil Service Reform Act was to make it easier, rather than more difficult, to rid the Government workforce of incompetent employees. A prime example of this intent may be found in Mr. Udall's criticism of an amendment (later rejected) offered by Representative Hanley to H.R. 11280 which would have imposed a hearing requirement before a Federal employee could be discharged. Mr. Udall, who authored the final House version of S. 2640, opposed the amendment, stating:

(1) ... There is something very fundamental and basic at stake here. This amendment goes exactly opposite to the main thrust of what we are trying to do in this bill. Presently, it is pretty hard, one of the premises on which this legislation is founded is that it is too difficult to discharge or discipline inefficient Federal employees...

(2) ... It moves in the opposite direction and instead of doing what this bill is trying to do to make it easier to fire incompetent Federal employees, it makes it much more difficult; so it is contrary to the basic purpose of the bill. It will make it even more difficult than it is today to remove an incompetent employee...

(3) ... We have testimony that it takes 152 days now —and that is the average time — to complete this appeal process. The real vice of this amendment is that it would keep this person on the payroll sitting around for that length of time. We would encourage employees who otherwise would go away and accept their discharge to appeal because they are going to get paid, and there they are inflicting their presence on the whole system while this appeal process is going on.

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H 9372 (daily ed. Sept. 11, 1978)

*d.* The Federal Labor Relations Authority found that a proposal that dealt with stays of suspensions or removals was negotiable in *American Federation of Government Employees, AFL-CIO, Local 1999 and Army-Air Force Exchange Service, Dix-McGuire Exchange, Fort Dix, New Jersey 2 FLRA 152 (1979), enforced sub nom. Department of Defense v Federal Labor Relations Authority, 659 F.2d 1140 (D.C. Cir. 1981), cert. denied sub nom. AFG v. FLRA, 102 S. Ct. 1443 (1982)*. However, the Authority noted that the common practice in the private sector was for management to implement the disciplinary action, subject to reversal, or modification, of that decision during the grievance or arbitration procedure and restoration to the disciplined employee of lost pay and benefits.

*e.* The accepted practice within the Federal sector is to implement the disciplinary action which would be subject to reversal during the grievance or appeal procedure and awarding of back pay. According to the US Office of Personnel Management's Labor Agreement Information Retrieval Service, no more than 14 agreements, which represent less than

1 percent of the total agreements within the Federal sector, contain a provision for stays of disciplinary / adverse actions. Moreover, throughout the Department of the Army, there are 358 agreements covering appropriated activities (U.S. Office of Personnel Management's *Union Recognition in the Federal Government*, November 1981, p. 20), none of which provide for the granting of stays of disciplinary actions.

f. It should be noted that the union has not presented any argument demonstrating a need for the proposal. A review of disciplinary and adverse actions at the activity indicates that only one action in the past 5 years has been reversed on appeal. Clearly the actions proposed by management are not arbitrary and capricious but are based on merit.

g. The activity has during negotiations made several concessions to the union. A review of the Adverse Action Article indicates that management has agreed to over 80 percent of the union's proposals. The activity has given the union an extended period of time for the employee to answer any proposed action. The union had originally requested 30 days, management offering 5 days as a counter with a compromise of 15 days agreed upon. Moreover, the activity has agreed to allow the employee and his or her representative eight hours to prepare for and present any reply, with a provision for extension of the time if needed.

h. It is essential that for disciplinary/adverse actions to be effective they must be timely. A stay of an action pending exhaustion of the appeals process would thwart this purpose. Moreover, a stay of a disciplinary/adverse action as already noted is contrary to the intent of the Civil Service Reform Act.

i. The activity's proposal for an expedited grievance procedure for employees receiving disciplinary or adverse actions is in accord with the spirit and intent of the Civil Service Reform Act. The proposal allows for a prompt hearing of the employee's grievance while permitting the activity to effect timely discipline. Should the employee prevail on the merits of his or her case, the harm inflicted on the employee will be minimal because of the rapid processing of the grievance. Therefore, the activity's proposal, rather than the union's, best addresses the needs and concerns of both parties.

In conclusion, it is respectfully requested for the reasons set forth above that the union's proposal on stays of actions be denied and the activity's proposal for an expedited arbitration procedure for disciplinary and adverse actions be adopted.

## **B-2. Day Care Center**

a. Union Proposal — The activity will provide a day care center for use by employees.

b. Activity Proposal — None. Adamantly opposed the proposal.

c. Activity Argument — The activity recognizes that a day care center is a "nice to have" item. In response to the union's proposal, the activity's comptroller office prepared an analysis of the cost of implementation of the proposal over the next year. The initial start-up cost would amount to \$50,000 (*See, Cost Study – Day Care Center* attached). The activity maintains that the costs of the center do not outweigh the benefits.

d. The union argues that a day care center will increase morale, employee productivity, and reduce the amount of annual leave taken by employees. It is asserted that annual leave will be reduced since employees will not have to arrange to drop off their children at a distant center and then come to work nor leave work early in order to pick up their children. One of the purposes of the activity's current flexitime program is to alleviate the need to use leave when it is necessary to pick up or drop off children at a day care center.

e. Moreover, the activity has taken a survey of its employees concerning the proposal. The survey reveals that out of an employee population of 2,500 only 50 employees, or 2 percent of the workforce would utilize the day care center (*See, Day Care Center Survey* attached).

f. The union has failed to meet its burden of demonstrating a need for the proposal and has clearly failed to show that the benefits to the activity as a whole outweigh the costs. Therefore, it is respectfully requested that the union's proposal for the establishment of a day care center be denied.

## **B-3. Notice Period for Reduction-in-Force**

a. Union Proposal — The notice period for reduction-in-force will be 90 days.

b. Activity Proposal — The notice period for reduction-in-force will be 60 days. Any employee may request and be granted annual leave or LWOP to provide a 90 day notice period prior to separation.

c. Activity Argument — The activity's proposal represents the past procedure at the activity. OPM regulations only provide for a 30 day minimum notice period. The activity's proposal exceeds the minimum notice period required by OPM regulation and is in accordance with Army regulation.

d. The activity presently has six bargaining units represented by four unions. All six bargaining units are within one competitive area for reduction-in-force purposes. The proposal in dispute would be applicable to only one of the bargaining units. If adopted the proposal would apply to 225 of the activity's 3,000+ employees. The rest of the employees would continue to receive only a 60 day notice. None of the other unions have requested negotiations over a similar proposal.

e. In its argument on the need for the proposal, the union states that reduction-in-force is a traumatic experience on employees and they need sufficient time to determine what their best option in dealing with a RIF notice is. However, it is the activity's position that our proposal provides the employee with sufficient time to look for alternatives.

Moreover, a review of previous reductions-in-force reveals that only ten individuals have ever been separated because of reduction-in-force actions. The activity has an active out placement program which has proven effective in reducing the adverse impact of reduction-in-force.

f. The activity maintains that the union has failed to meet its burden in demonstrating a need for the change in the past practice. Therefore, it is respectfully requested that the activity's proposal be adopted.

## Appendix C LAIRS SUBJECT CLASSIFICATION INDEX

The following tables indicate categories of the LAIRS subject classification index.

**Table C-1**  
**LAIRS Subject Classification Index—Main Subjects**

Category
01— AGREEMENT
02— ARBITRATION
03— DISCIPLINE
04— EMPLOYEE RIGHTS
05— EMPLOYER RIGHTS
06— FACILITIES /SERVICES
07— GRIEVANCE (S) (APPEALS, COMPLAINTS)
08— HOURS OF WORK
09— LAWS / REGULATIONS
10— LEAVE
11— NEGOTIATION / CONSULTATION
12— NON-DISCRIMINATION
13— OVERTIME
14— PAY PRACTICES
15— PERFORMANCE
16— POSITION CLASSIFICATION
17— PROMOTION
18— REDUCTION-IN-FORCE
19— REPRESENTATION
20— SAFETY
21— TRAINING
22— UNION RIGHTS
23— WORK ASSIGNMENT
24— ULP PROCEDURES
25— ULP'S AGAINST MANAGEMENT
26— ULP'S AGAINST UNION
27— ULP REMEDIES
99— MISCELLANEOUS

**Table C-2**  
**LAIRS Subject Classification Index**

Category
01— AGREEMENT
<i>Duration</i>
— Effective Date
— Expiration Date
— Amendment
— Re-opening
— Renewal
— Termination
<i>Coverage</i>
— Recognition
— Unit Definition
<i>Approval</i>
— Delay
— Refusal to Sign
<i>Publication</i>

---

**Table C-2**  
**LAIRS Subject Classification Index—Continued**

---

Category

- Printing
- Distribution

*Contingence*

- Severability
- Successorships
- Consolidation of Unit(s)
- Elimination of Unit(s)
- Organization Change

*Other*

02— ARBITRATION

*Scope*

- Arbitrable Matters Defined
- Adverse Actions
- Exclusions
- Binding
- Advisory
- Fact-finding

*Procedures*

- Number of Arbitrators
- Selection
- Payment of Fees
- Time Limitations
- Transcript
- Location of Hearing
- Stipulations
- Filing Exceptions

*Representation*

- Grievant's Rights
- Union Rights

*Official Time*

- Grievant
- Union Representatives
- Witness(es)

*Arbitrator*

- Authority Exceeded

*Other*

03— DISCIPLINE

*Procedures*

- Just Cause
- Hearing
- Investigation
- Notification—Union
- Notification—Employee
- Limitations on Penalties
- Union Representation

*Non-Performance*

- Incompetence
- Sleeping on Job
- Disability
- Conflict of Interest
- Interference of Union Activity
- Arrest
- Litigation
- Resignation

*Neglectful Conduct*

**Table C-2**  
**LAIRS Subject Classification Index—Continued**

Category
— Absenteeism
— Tardiness
— Intoxication
— Drug Abuse
— Horseplay
— Leaving Job Site
— Loitering
— Unsafe Work Methods
— Breach of Confidence
— Wage Garnishment
— Destruction of Property
— Patient Abuse
<i>Disorderly Conduct</i>
— Job Action
— Insubordination
— Abusive/Threatening Language
— Fighting
— Gambling
— Moral Turpitude
<i>Dishonesty</i>
— Falsification of Records
— Misappropriation of Property
— Theft (stealing)
— Abuse of Authority
<i>Other</i>
04— EMPLOYEE RIGHTS
<i>Representation</i>
— Under Executive Order/Statute
— Choose Representative
— Choose/Refuse Labor Organization Membership
— Freedom from Coercion, Interference, Restraint, etc.
<i>Seniority</i>
<i>Personal</i>
— Apparel
— Insignia
— Grooming
— Property
— Privacy
<i>Personnel Records</i>
— Access to
— Insertions to
— Copies of
<i>Nepotism</i>
<i>Other</i>
05— EMPLOYER RIGHTS
<i>Under Executive Order/Statute</i>
<i>Issue Rules</i>
<i>Assign Work</i>
—Contract out
<i>Improved Technology</i>
— Time Studies
— Productivity Studies
— Surveys
<i>Other</i>
06— FACILITIES/SERVICES
<i>Health</i>

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**Table C-2**  
**LAIRS Subject Classification Index—Continued**

---

Category

- Health (first aid) Unit
- Preventive medicine
- Physical Examination
- Alcoholism
- Drug Abuse
- Blood Donation
- Insurance

*Work Climate*

- Lighting
- Temperature
- Ventilation
- Psychological

*Personal Needs*

- Cafeteria
- Locker Rooms
- Living Quarters
- Recreation Area
- Day Care
- Banking
- Credit Union

*Transportation*

- Re-location Assistance
- Travel Allowances
- Parking
- Commuting Area
- Emergency
- Type (car)

*Job-Related*

- Uniforms
- Tools
- Equipment
- Suggestion Program
- Suggestion Committee

*Community-Related*

- Charity Campaign
- U.S. Bonds

*Retirement/Pensions*

*Other*

07— GRIEVANCE(S)

*Scope*

- Exclusivity of Procedure
- Statutory Appeals Exemption
- Formal
- Informal
- Official Time
- Exclusions
- Interpretation/Application Regulations
- Interpretation/Application Agreement

*Procedures*

- Time Limits
- Oral
- Written
- Final Step (non-arbitration)
- Combining Grievances
- Reinstatement of Grievance
- Hearing

*Representation*

- Union Rights – Limitations
- Union Grievance
- Presence at Meetings
- Steward's Role

**Table C-2**  
**LAIRS Subject Classification Index—Continued**

Category	
	<i>Management Rights</i>
	— Management Grievance
	— Unilateral Adjustment
	— Supervisor's Role
	<i>Individual Rights</i>
	— Self Representaion
	— Union Representaion
	— Other Representaion
	— No Reprisal for Filing
	<i>Appeals</i>
	— Adverse Actions
	— Classification
	— Performance Rating
	— EEO
	<i>Official Time</i>
	— Grievant
	— Union Representative
	— Witnesses
	<i>Other</i>
08—	HOURS OF WORK
	<i>Scheduling</i>
	— Workweek Definition (Flexitime)
	— Time Clocks
	— Work Reports
	<i>Guarantee(s)</i>
	— Workweek
	— Call-back
	— Reporting
	— Overtime
	— Holiday
	<i>None-work Periods</i>
	— Meal
	— Rest
	— Sleep
	— Travel
	— Clean-up
	— Down-time
	<i>Other</i>
09—	LAW/REGULATIONS
	<i>Office of Personnel Management (OPM) Statute (Executive Order)</i>
	— FLRA (FLRC)
	— FSIP
	— A/SLMR
	<i>Agency</i>
	—Compelling Need
	<i>Comptroller General</i>
	<i>Courts</i>
	<i>Other</i>
10—	LEAVE
	<i>Sick</i>
	— Approval
	— Denial
	— Advance
	— Medical Clearance
	— Call-in Requirement
	— Duration
	— Misuse
	— Imposed
	<i>Annual</i>

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**Table C-2**  
**LAIRS Subject Classification Index—Continued**

---

Category

---

- Approval
- Denial
- Cancellation
- Advance
- Preference in Selection
- Duration
- Scheduling
- Misuse
- Imposed

*Miscellaneous Paid*

- Court
- Jury Duty
- Voting
- Training
- Military
- Funeral
- Administrative
- Misuse
- Denial
- Home Leave

*Without Pay*

- Maternity
- Paternity
- Education
- Union Business
- Personal Business
- Emergency
- Misuse
- Denial

*Holiday*

- Eligibility
- Denial
- Effect on other leave
- Effect on Overtime
- Effect on Work Schedule
- Misuse

*Restoration*

*Other*

11— NEGOTIATION / CONSULTATION

*Scope*

- Past Practice
- Zipper
- Consultation Only
- Refusal to
- Veteran's Organization
- Other Lawful Association

*Procedures*

- Ground Rules
- Composition of Teams
- Official Time Allowance
- Joint Committee
- Mid-term
- Multi-unit Bargaining
- National Consultation
- Failure to Bargain

*Impasse*

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**Table C-2**  
**LAIRS Subject Classification Index—Continued**

---

Category

---

- Referral to Higher Authority
- Mediation
- Factfinding
- Arbitration (Interest)
- FSIP
- No Strike
- No Lockout
- Negotiability
- Implementation

*Negotiability*

*Determinations by Subject Matter*

- Representation
- Employee Rights
- Union Rights
- Hours of Work
- Overtime
- Pay Practices
- Facilities/Services
- Promotions/Filling Vacancies
- Leave
- Health/Safety
- Training
- Discipline
- Reduction in Force
- Seniority
- Grievance/Arbitration Procedures
- Performance/Productivity
- Position Description/Classification
- Official Time/Travel/Per Diem
- Non-Discrimination
- Assignment of Employees/Work

*Supervisors*

- Units of Supervisors
- Temporary Supervisors
- Supervisory Representation by Unions

*Recognition Procedures (In General)*

- Submission Requirements
- Duration
- Standards of Conduct
- Refusal to Accord Recognition
- Defunctness
- Election Bar
- Certification Bar
- Agreement Bar
- Posting Notice of Petition
- Status of Petitions
- Reorganization Impact
- Conduct of Union During Campaign
- Conduct of Management During Campaign
- Conduct of Employees During Campaign
- Unit Accretion

*National Consultation Rights*

- Scope
- Procedures

*Recognition, Exclusive*

- Consolidation of Units
- Unit Determination Criteria
- Elections
- Rights of Exclusive Representative

*Union Officials/Stewards*

**Table C-2**  
**LAIRS Subject Classification Index—Continued**

Category
— Number
— Assignment
— Official Time Allowance
— Superseniority
— Presence at Meetings
— Types of Meetings
— Visitation of Worksite
— Special Privileges
<i>Procedures and Activities</i>
— Clearance by Management
— Record Keeping
<i>Types of Petitions</i>
— RO—Representation filed by Labor
— RA—Agency Doubt as to Status
— DR—Decertification filed by Employees
— CU—Clarification of Unit
— AC—Amendment of Recognition
— National Consultation Rights
— Consolidation of Units
<i>Elections</i>
— Procedures
— Objections
— Challenges
— Agency Neutrality
<i>Rights of Exclusive Representative</i>
— Formal Discussions – Grievances
— Formal Discussions – Conditions of Employment
— Formal Discussions – Procedures
<i>Unit Determination Criteria</i>
— Community of Interest
— Effective Dealings/Efficiency of Operations
<i>Negotiability</i>
<i>Determinations by Legal Constraint</i>
— Management Rights – 7106(a)(1)
— Management Rights – 7106(a)(2)(A)
— Management Rights – 7106(a)(2)(B)
— Management Rights – 7106(a)(2)(C)
— Management Rights – 7106(a)(2)(D)
— Management Rights – 7106(b)(1)
— Compelling Need
— Government Wide Regulation
— Law (Other than 5 USC 7106)
— Not a Condition of Employment
— Procedural Dismissal
<i>Other</i>
12— NON-DISCRIMINATION
<i>Types</i>
— Race
— Sex
— Age
— Nationality
— Religion
— Union Activity
— Handicapped Persons
— Political Affiliation
— Marital Status
<i>Affirmative Action</i>
Written Plan
— Joint Committee
— Selection of Counselor
— Minority Preference

**Table C-2**  
**LAIRS Subject Classification Index—Continued**

Category	
	<i>Other</i>
13—	OVERTIME
	<i>Restrictions</i>
	— Notification Requirements
	— Selection Criteria
	— Right of Refusal
	<i>Eligibility</i>
	— Exempt/Non-Exempt
	<i>Compensatory Time</i>
	<i>Other</i>
14—	PAY PRACTICES
	<i>Differentials</i>
	— Shift
	— Environmental
	— Remote Site
	— Geographic
	<i>Increases</i>
	— Eligibility
	— Within-Grade
	<i>Supplementary</i>
	— Stand-by
	— Separation
	— Reporting
	— Call-back
	— Retroactive (backpay)
	— Retirement
	— Travel-Per Diem
	— Disability
	<i>Procedures</i>
	— Overpayment
	— Wage Survey
	<i>Reduction</i>
	— Downgrading
	<i>Deductions</i>
	— Retirement
	<i>Pay Levels</i>
	— Rates
	<i>Legal Fees</i>
	<i>Other</i>
15—	PERFORMANCE
	<i>Recognition</i>
	— Cash Award
	— Quality Pay Increase
	— Awards Committee
	<i>Appraisal</i>
	— Standards/Critical Elements
	— Employee Rights
	— Union Rights
	— Committees
	<i>Other</i>
16—	POSITION CLASSIFICATION
	<i>Position Description</i>
	— Working out of Classification
	— Qualifications
	<i>Position Evaluation</i>
	<i>Position Elimination</i>
	<i>Other</i>
17—	PROMOTION

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**Table C-2**  
**LAIRS Subject Classification Index—Continued**

---

Category

---

*Types*

- Permanent
- Temporary
- Repromotion
- Non-Competitive
- Outside Unit of Recognition
- Retroactive

*Procedures*

- Posting
- Filling Vacancies
- Tests
- Priority Consideration
- Preference to Unit Employees
- Performance Rating/Evaluation
- Assessment of Potential
- Joint Committee
- Union Membership Panel
- Criteria
- Area of Consideration
- Timeliness
- Preselection
- Anti-Union Animus
- Seniority
- Ranking of Candidates
- Failure to Promote
- Use of Other Procedures

*Other*

18— REDUCTION-IN-FORCE

*Procedures*

- Existing Vacancies
- Competitive Areas/Levels
- Bumping
- Notification – Employees
- Notification – Union
- Review – Employee
- Review – Union
- Recall
- Rehire
- Retention Rights
- Veterans Preference
- Retreat Rights

*Other*

19— REPRESENTATION

*Definitions*

- Agency
- Employee
- Supervisor
- Labor Organization
- Management Official
- Confidential Employee

*Coverage*

- Agencies
- Suspension of CSRA (7103(b)(1), (b)(2))
- Labor-Management Administrators
- Management Officials
- Confidential Employees
- Personnel Specialists
- Professional Employees
- Intelligence/Investigative Work
- Part-Time/Intermittent/Temporary
- GS Employees
- Wage Grade Employees

*Unit Determination Criteria*

**Table C-2**  
**LAIRS Subject Classification Index—Continued**

Category	
	<ul style="list-style-type: none"><li>— Agency Wide Scope</li><li>— Activity Wide Scope</li><li>— Directorate Wide Scope</li><li>— Command Wide Scope</li><li>— Headquarters Wide Scope</li><li>— Field Wide Scope</li><li>— Region Wide Scope</li><li>— Division Wide Scope</li><li>— Area Wide Scope</li><li>— District Wide Scope</li><li>— Branch Wide Scope</li><li>— Base Wide Scope</li><li>— Multi-Unit</li><li>— National Exclusive Recognition</li></ul>
	<i>Other</i>
20—	SAFETY
	<i>Procedures</i>
	<ul style="list-style-type: none"><li>— Committee</li><li>— Regulations (Rules)</li><li>— Inspection</li><li>— Reporting Accidents/Hazards</li><li>— Record Keeping</li><li>— Reports/Notices to Union</li></ul>
	<i>Assignment</i>
	<ul style="list-style-type: none"><li>— Solitary Work</li><li>— Stand-by</li><li>— Hazardous Work</li></ul>
	<i>Equipment</i>
	<ul style="list-style-type: none"><li>— Clothing</li><li>— Posters</li><li>— Devices</li><li>— Vehicle</li></ul>
	<i>Other</i>
21—	TRAINING
	<i>Programs</i>
	<ul style="list-style-type: none"><li>— Orientation</li><li>— Apprenticeship</li><li>— Management (supervisory)</li><li>— Re-training</li><li>— Labor Relations</li><li>— Career</li></ul>
	<i>Procedures</i>
	<ul style="list-style-type: none"><li>— Official Time</li><li>— Committee</li><li>— Reimbursement</li></ul>
	<i>Counseling</i>
	<ul style="list-style-type: none"><li>— Retirement</li><li>— Self-Improvement</li><li>— Other Personal</li></ul>
	<i>Other</i>
22—	UNION RIGHTS
	<i>Office Services</i>
	<ul style="list-style-type: none"><li>— Space</li><li>— Telephone</li><li>— Mail</li></ul>
	<i>Dues Withholding</i>

---

**Table C-2**  
**LAIRS Subject Classification Index—Continued**

---

Category

---

- Amount of Deduction
- Service Charge
- Records/Procedures
- Revocation

*Communication*

- Bulletin Boards
- Membership Meetings
- Discipline of Members
- Campaigning as Such
- Public Address
- House Organ
- Official Agency Records

*Recognition Unit*

- Jurisdictional Bar

*Literature*

- Insurance Plans
- Meeting Plans
- Anti-Union
- Anti-Management
- News

*Reorganization*

*Other*

23— WORK ASSIGNMENT

*Temporary*

- Loan
- Details
- Disability
- Trial Period
- Emergency

*Restrictions*

- Notification Requirements
- Union Concurrence
- Limitations on Unit Work
- Moonlighting

*Conditional*

- Shift
- Undesirable
- Stand-by
- Probationary
- Part-Time
- Seasonal
- Special
- Volunteer
- Tenant Activity
- Employment Agreement

*Supervisory Transfer*

- Reassignment

*Other*

24— ULP PROCEDURES

*Timeliness*

*Filing of Charge*

*ULP Procedures vs. Other Appeal Options 7116(d)*

*Investigation*

*Decision to Dismiss*

*Hearings*

*ALJ*

*Review of ALJ*

25— ULP'S AGAINST MANAGEMENT

*Interference/Restraint 7116(a)(1)*

- Interference
- Distribution of Literature
- Solicitation

---

**Table C-2**  
**LAIRS Subject Classification Index—Continued**

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Category

*Encourage/Discourage* 7116(a)(2)  
*Sponsor/Control/Assist* 7116(a)(3)  
*Reprisal* 7116(a)(4)  
*Refusal to Consult/Negotiate* 7116(a)(5)  
— Response to Bargaining Request  
— Failure to Meet and Confer – Generally  
— Failure to Meet and Confer – Impact and Procedures  
— Refusal to Allow Formal Discussion Representative  
— Uncompromising Attitude  
— Dilatory Tactics  
— Unilateral Changes in Terms and Conditions of Employment  
— Bypassing Exclusive Representative  
— Refusal to Furnish Information  
— Failure to Meet Obligations Under National Consultation Rights

*Impasse Procedures* 7116(a)(6)  
*Enforce Rule Over Agreement* 7116(a)(7)  
*Other Rights* 7116(a)(8)  
*Management Expression of View* 7116(e)  
*Deminimus*

26— ULP'S AGAINST UNION  
*Interference/Restraint of Employee* 7116(b)(1)  
*Influence Agency to Discriminate* 7116(b)(2)  
*Reprisals* 7116(b)(3)  
*Discriminate* 7116(b)(4)  
*Refuse to Consult/Negotiate* 7116(b)(5)  
*Impasse Procedures* 7116(b)(6)  
*Strike/Slowdown* 7116(b)(7)  
*Other* 7116(b)(8)  
*Deny Membership* 7116(c)  
*Union Expression of View* 7116(e)  
*Deminimus*

27— ULP REMEDIES  
*Against Agencies*  
— Cease and Desist  
— Return to Status Quo  
— Reinstatement  
— Restitution  
— Notice  
  
*Against Unions*  
— Cease and Desist  
— Notice  
  
*Other*  
— New Elections  
— Bargaining Orders  
— Rescind

99— MISCELLANEOUS

---

**RESERVED**

**NOTICE TO FEDERAL MEDIATION AND CONCILIATION SERVICE**  
(Pursuant to FMCS Regulations Published in CFR 1425.3)

Date .....

To: Regional Office, FEDERAL MEDIATION AND CONCILIATION SERVICE

1. You are hereby notified that we desire to (check one):

- Enter into an initial agreement.....
- Amend, modify, or terminate an existing agreement .....

2. Name of Agency.....

Name of Bureau or Activity .....

Agency Official to be Contacted .....

Address .....

..... Telephone (AC) (NO.)

3. Name of Union and Local No. ....

Union Official to be Contacted .....

Address .....

..... Telephone (AC) (NO.)

4. Date exclusive recognition granted .....

5. Number of employees in bargaining unit(s) .....

6. Agreement expiration /OR/ reopening date .....

7. Name of official filing this notice .....

Title of official .....

Address .....

..... Telephone (AC) (NO.)

8. Check on whose behalf this notice is filed: Union..... Agency.....

.....  
(Signature)

Receipt of this notice does not constitute a request for mediation nor does it commit the agency to offer its facilities. This particular form of notice is not legally required. Receipt of notice will not be acknowledged in writing by the Federal Mediation and Conciliation Service.

**RESERVED**

FEDERAL SERVICE IMPASSES PANEL  
REQUEST FOR ASSISTANCE

Form Approved:  
OMB No. 52-R0007

Date \_\_\_\_\_

**INSTRUCTIONS:** File an original and one copy of this Request (including attachments) with the Executive Director, Federal Service Impasses Panel, 500 C St., SW, Washington, D.C. 20424. Also serve a copy of the Request (with attachments) on the other party to the dispute and on the mediator, and submit a written statement of such service to the Executive Director.

1. This is a request to the Panel, filed under the Federal Service Labor-Management Relations Statute and the Panel's regulations, to: *(Check one)*
  - (a)  Consider a negotiation impasse.
  - (b)  Approve a binding arbitration procedure for resolution of a negotiation impasse.
2. (a) Name of Agency \_\_\_\_\_
  - (b) Address \_\_\_\_\_ Phone No. \_\_\_\_\_
  - (c) Person to Contact \_\_\_\_\_ Title \_\_\_\_\_
3. (a) Name of Labor Organization \_\_\_\_\_
  - (b) Address \_\_\_\_\_ Phone No. \_\_\_\_\_
  - (c) Person to Contact \_\_\_\_\_ Title \_\_\_\_\_
4. Description of Bargaining Unit \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Number of Employees in Bargaining Unit \_\_\_\_\_ Date Labor Agreement Expires \_\_\_\_\_
6. (a) If item 1(a) is checked, attach a written submission setting forth (1) the issues at impasse and requesting party's summary position thereon; (2) the number, length, and dates of negotiation and mediation sessions held; and (3) the name and address of the mediator.  
(b) If item 1(b) is checked, attach a written submission setting forth (1) the issues at impasse; (2) the number, length, and dates of negotiation and mediation sessions held; (3) the name and address of the mediator; (4) the issues to be submitted to the arbitrator; (5) a statement that the proposals to be submitted to the arbitrator contain no questions concerning the duty to bargain; and (6) the arbitration procedures to be used.
7. (a) Name of Individual Filing This Request \_\_\_\_\_ Title \_\_\_\_\_
  - (b) Address \_\_\_\_\_ Phone No. \_\_\_\_\_
  - (c) Signature \_\_\_\_\_
8. If this is a joint labor-management request:
  - (a) Name of Other Individual Filing This Request \_\_\_\_\_ Title \_\_\_\_\_
  - (b) Address \_\_\_\_\_ Phone No. \_\_\_\_\_
  - (c) Signature \_\_\_\_\_

**RESERVED**

**UNCLASSIFIED**

**PIN 052973-000**

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