

**The Collective
Bargaining Process
In-Depth
Part 5**

**The bargaining process
Beginning to end**

Hello NWP Members and Reps;

Welcome to LR Chronicles number 35. Thus far, I have discussed the various federal laws that cover collective bargaining in the federal sector, when and why bargaining is required, as well as the law that covers management rights and how those rights apply to collective bargaining. I have also briefly discussed Union-initiated bargaining in accordance with Article 7 of the collective bargaining agreement. In this, as well as the next edition, I will explain the logical order of the process of collective bargaining from beginning to end.

The vast majority of this explanation will be general in nature regarding changes to conditions of employment, rather than specific in nature as it would apply to the basic work schedule and/or annual leave negotiations. Although I will cover those specific negotiations at the local level, it is very important to understand the process as it applies to general changes in working conditions. The process, as outlined below and in the next edition, is a step-by-step process that is a long-standing practice that has been in effect between NATCA and the FAA. This process is supported by our CBA as well as arbitration decisions and FLRA case law. Notwithstanding the differences between our CBA and the FAA's white book regarding bargaining below the level of exclusive recognition, the FAA MUST be taken to task and held responsible for inappropriate conduct as it relates to bad faith bargaining. If there are any issues with the FAA's conduct in your local negotiations, you need to immediately contact your RVP or Regional LR Lead.

Notice of proposed changes and duty to bargain:

Should the FAA contemplate any change to working conditions or other conditions of employment, it is incumbent upon them to notify NATCA. Typically, this notification needs to be in the form of a letter to the Union stating that they intend to make a change in personnel policies, practices and matters affecting working conditions. Additionally, this notice should address what the change is as well as the time frame for implementation of the change. The time frame for ALL changes to working conditions regarding NATCA and the FAA is not less than thirty (30) days. This requirement is contained within Article 7 of both the CBA as well as the FAA's white book. Once the thirty (30) day notice is received, the timeline starts for the Union to respond. Both the CBA and the white book state that the Union has fifteen (15) days in which to respond to a notice of proposed change.

However, as discussed in a previous edition, there is a difference between the CBA and the white book regarding from what level this notice shall be served. As you will recall, the white book states that all bargaining, except for those issues to which they have agreed otherwise, shall be at

the national level. Therefore, be prepared to not receive a notice, unless the change is regarding any issue for which they have agreed to bargain below the level of exclusive recognition. Even then, it has been the practice of the FAA, in the last 3 years to not even bother to serve notice at any level regarding negotiable changes.

Response to the notice of proposed change, should you receive one:

Should you receive a notice of proposed change, then all timelines as contained in Article 7 officially begin. As you will notice, the fifteen (15) day response time is from the “receipt” of the notice and NOT the date of the notice. This response to a notice of proposed change is strictly to request a meeting regarding the change. If you do request a meeting, then in accordance with Article 7, the meeting shall be held within ten (10) days of the Union’s request. This meeting is conducted so that both parties’ can review the proposed changes. The Agency will be purposely covert in their initial notice. Therefore, it is incumbent upon you to request the meeting in order to be fully and completely briefed as to the extent of the proposed change, as well as to ask any clarifying questions should you not have a full and complete understanding of the proposed change. If the Agency cannot give you satisfactory answers to your questions, then you have a right to receive those satisfactory answers. There is a process to follow should you not completely understand the FAA’s proposed changes.

Below, is a sample response to a notice of proposed change should you receive that appropriate notice. I highly suggest that you use similar language when requesting a meeting regarding any proposed change for which you receive notice. This also may be done via email instead of formal letter if you prefer. The response should include the name of the ATM (or whomever sent you the notice of proposed change), as well as the address of the facility. I also suggest that you either hand-deliver the response, or fax it with a return receipt. If it is hand-delivered, you need to have them sign for it as well as the date/time they signed. Another option is to send it to them via certified mail, return receipt requested, which costs additional monies. Regardless of the method that you choose to disseminate, the response should be addressed to your ATM:

I am in receipt of your notice of proposed change to working conditions and/or other conditions of employment, dated May 17, 2009, which I received on May 21, 2009. These contemplated changes, as you know, directly impact the working conditions of bargaining unit employees that I represent. As per Article 7 of the collective bargaining agreement, the Union requests a meeting in order to discuss these proposed change(s) so that the Union may fully and completely understand the extent of these proposed changes. I, as the local Union representative, reserve the right to request the initiation of formal bargaining over all negotiable matters related to this issue. In the interim, NATCA Local XXX requests that the Agency cease and desist from any actions regarding this matter, and I further request that the Agency shall not make any changes to working conditions, other conditions of employment, or practices until this requested meeting takes place and bargaining is complete. Please contact me at your earliest convenience in order to schedule the requisite meeting.

Should you not receive a timely response to this letter, it is incumbent upon you to elevate the issue as appropriate. All timelines contained in Article 7 will continue to run unless you request and receive agreement from the agency to hold those timelines in abeyance pending their

response to this letter. One tactic that is often used is to agree to a specific date or time frame (i.e. thirty days from receipt of all follow-up information) for the submission of a proposal at the end of the briefing.

Should you become aware of a change and you receive no notice from management:

This is the scenario that has repeatedly occurred since the FAA imposed their own rules on September 3, 2006. There is a process that the NATCA National Office has developed for this exact scenario. Should you become aware of local management making changes to working conditions or other conditions of employment, simply notify your RVP or Regional LR Lead. Included in this notification, you need to clearly explain what the change is, what the previous practice was, and how it affects the bargaining unit employees of your facility. The RVP or Regional LR Lead will notify the NATCA National Office and they will, in turn, send a letter to the FAA at the national level requesting a briefing under Article 7. The notification to your RVP or Regional LR Lead needs to be done AS SOON AS you become aware of the offending change due to the timelines as outlined in Article 7. The NATCA National Office, in their letter to FAA HQ, will name you (or your designee) as the point of contact (POC) for the issue. Therefore, be sure to include all of your contact information, or that of your designee, when notifying your RVP or Regional LR Lead.

Additionally, you need to place local management on notice to not make any changes until formal bargaining is complete. Below is a sample letter to send to your ATM:

*NATCA Local XXX has recently become aware of the Agency's plan to (**state change here**). This planned change directly impacts bargaining unit employees that I represent. As such, I request a full briefing regarding this matter. I also reserve the right to request formal bargaining over all negotiable matters related to this issue. In the interim, NATCA Local XXX expects the Agency will cease and desist from any actions regarding this matter and will not make any changes to current policies, practices or working conditions until a satisfactory briefing has been provided and bargaining is complete. Please contact me at your earliest convenience to discuss this matter.*

Full and complete briefing regarding proposed change OR lack of notification regarding any proposed change:

Regardless of whether or not you receive a notice of proposed change, the next step is that you receive the briefing that you requested. Of course, the FAA being the FAA, more likely than not, will not offer a briefing. Should the FAA not offer to brief the Union then again, you need to contact your RVP or your Regional LR Lead so that they can elevate the issue above the facility level. Additionally, you need to file a grievance within twenty (20) calendar days of the denial to provide a briefing or within twenty (20) calendar days of no response to your request for the briefing. This will allow elevation to arbitration should the RVP or Regional LR Lead not be successful in rectifying the situation to the district or service area level.

However, if the Agency offers a briefing at the local level, this shall be held within ten (10) days of the Union's request, unless you agree to extend that time frame. At the briefing, the Agency

should expand on their initial notification to you (if you received one). If they do not, then it is incumbent upon you to ask clarifying questions in order so that you may have a full and complete understanding of the change in order for you to properly prepare your proposals. If you do ask any clarifying questions and the Agency does not provide satisfactory answers to your questions, you need to submit these questions to the ATM (or whomever gave you the briefing) and request, in writing, written responses to each and every question. Along with the clarifying questions, it is a very good practice to request an extension of timelines in which to submit proposals. As per Article 7, the Union has thirty (30) days, from receipt of the original notice, in order to submit written proposals. Therefore, your timeline to submit written proposals begins from RECEIPT of the original notice. This is, of course even if you received an original notice. Otherwise, the timeline starts from the time that the Union became aware of the proposed change. If you did receive a notice of proposed change, I would suggest that you request an extension of timelines or submit proposals, ONLY after you have received a briefing and/or you are satisfied that the briefing you received was full and complete and you fully understand the proposed change. Otherwise, elevate the issue to your RVP or Regional LR Lead and let them handle the issue.

Regardless of whether you request a briefing or an extension of timelines for which to submit proposals, you MUST receive an answer from the Agency, IN WRITING. You must remember that any “request” must be acknowledged in writing from the Agency, or it was NEVER granted! Should you not receive a response, in writing, from the Agency, please contact your RVP or Regional LR Lead for appropriate guidance. Lastly, should you not be able to rectify any alleged lack of notice or opportunity to bargain a proposed change in working conditions, file a grievance.

Documentation:

It is VERY highly recommended that any and all communication regarding any facet of the bargaining process be in written form. Although documentation is very important, regardless of what we do as a NATCA representative, it is extremely important in negotiations. The reason being that more likely than not, any breakdown in negotiations will end up before a third party. As I have said before in many editions of the LR Chronicles, as well as in classes that are taught in the NWP, you NEVER want to end up in a “he said/she said” scenario. You want YOUR version of events to be the DOCUMENTED as well as the CORRECT version. This is especially true concerning issues that arise before a third party. Please document EVERYTHING!!

Submission of Proposals:

Once it has been determined that there is a change to conditions of employment and that a bargaining obligation exists, it is time to submit bargaining proposals. Please remember, as stated earlier that bargaining proposals MUST be submitted within thirty (30) days of receipt of the original notice, provided that you received a notice and/or briefing. If you received neither, you should contact your RVP or Regional LR Lead for guidance on how to proceed. Also, please remember that this process mainly applies to a “statutory” obligation to bargain rather

than a “contractual” obligation to bargain. The “contractual” obligation to negotiate the BWS and/or annual leave MOUs take on a different process.

With respect to bargaining, for the purposes of the LR Chronicles, there are two (2) types of proposals:

- Ground Rules proposals; and
- Substantive proposals.

Ground Rules proposals:

Although the specific term “ground rules” are not contained within 5 USC 7106(b)(2) and (3), the FLRA has nonetheless, determined that ground rules are mandatory subjects of bargaining because they concern conditions of employment. Either party may lawfully insist on reaching a “ground rules” agreement BEFORE beginning substantive bargaining. This applies to both Term (master CBA) and mid-term (MOUs) bargaining.

The authority to conduct ground rules bargaining is contained both within law and our CBA. 5 USC 7114(a)(4) states in part *“in addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.”* Article 7, Section 8 of our collective bargaining agreement states *“nothing in this article is intended to preclude the parties from formulating ground rules for mid-term bargaining issues.”*

Simply stated, ground rules are agreed upon procedures that regulate the conduct of substantive negotiations. There are many issues that may be negotiated as part of “ground rules” for substantive negotiations. Outlined below, are just some issues you should consider when negotiating ground rules:

- Negotiating team make-up; this is your team. You are allowed to choose who you want as part of your team as long as that is within the bounds of 5 USC 7131(a); **(this is an official time issue)**
- Chief negotiator for each party; this is who is authorized to speak on behalf of each party, as well as the person who has full authority to bind each party to a course of action; **(this should be the FACREP or the FACREP’s designee)**
- Mutually agreeable times and places for the conduct of negotiations;
- Length of each bargaining session;
- Who may call for a caucus and the length of each caucus;
- Use of subject matter experts (SMEs), including notification to the other party on the use of SMEs and the official/duty time for Union SMEs; **(be sure to include how far in advance notification must be given prior to the use of SMEs)**
- Use of observers; including notification to the other party and the duty status of any observer; **(be sure to include how far in advance notification must be given prior to an observer being allowed in the negotiations)**
- When and how will the first substantive proposals be traded; will this be simultaneously or will the Union or management give their proposal first, including any timelines for

responding to a proposal. (see **below regarding submitting ground rules and substantive proposals simultaneously**)

- Use of recording devices;
- Official time for Union negotiators; (**5 USC 7131**)
- Impasse and/or mediation procedures; (**I will explain this in a future edition of the LR Chronicles**)
- TAU arrangements;

There is one very important fact to be considered regarding negotiating ground rules. In accordance with FLRA case law, ground rules negotiations are designed to “*further, not impede*” substantive negotiations. To that end, the FLRA has ruled that ground rules proposals **MUST** be submitted simultaneously with the Union’s substantive proposals. Therefore, do not attempt to submit ground rules proposals without your U-1 substantive proposals, thinking that you can delay submission of the substantive proposals. If you choose to do this, the FAA has no obligation to respond to your ground rules proposals. However, there is a possibility that the FAA will agree with you to complete ground rules negotiations **PRIOR** to submitting and bargaining over substantive proposals. If you reach such an agreement, you **MUST** obtain that agreement in writing.

It is not mandatory to negotiate ground rules. You may do so if you choose. However, if one party insists on ground rules negotiations, then it becomes mandatory for both parties. If you are going to negotiate a relatively major issue that may result in a lengthy MOU, then it may be a good idea to negotiate a ground rules agreement. Please be aware that “regressive bargaining” as explained in LR Chronicles number 34, applies to ground rules negotiations.

Below is some FLRA case law as it applies to ground rules negotiations:

- Ground rules proposals must be designed to further, not impede, the bargaining for which ground rules are proposed. (*36 FLRA 524*)
- The negotiation and use of official time for representational purposes under 5 USC 7131(d) exists as an exception to the right to assign and direct employees. (*51 FLRA 1371*)
- Good faith bargaining extends to all phases of negotiations. This includes the negotiation of ground rules at the beginning of the process as well as during later stages of bargaining. (*36 FLRA 524*)
- Just as in negotiating a comprehensive labor contract, when notified of a proposed change in practice, the Union has a right to insist upon negotiating a set of written ground rules. (*16 FLRA 602*)

As you can see from this edition, there are many nuances to the bargaining process depending on how you discover a potential change in working conditions. Regardless of whether or not you receive a notice of proposed change, it is important for you to contact your RVP or Regional LR Lead in order to receive the appropriate guidance on how to proceed with the issue. Once again, this bargaining process mainly applies to the statutory obligation to bargain, but it may also apply to the contractual obligation to bargain. If you ever have a question regarding the difference between the two, please contact your RVP or Regional LR Lead.

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