United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of PENSION BENEFIT GUARANTY CORPORATION WASHINGTON, D.C. and LOCAL R3-77, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, SEIU	Case No. 08 FSIP 63

DECISION AND ORDER

The Pension Benefit Guaranty Corporation, Washington, D.C. (Employer or PBGC) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and Local R3-77, National Association of Government Employees (NAGE), SEIU (Union).

After investigating the request for assistance, the Panel determined that the dispute, which concerns ground rules for negotiations under the mid-term reopener provision in the parties' collective-bargaining agreement (CBA),[1/] should be resolved through single written submissions from the parties. The parties were advised that following the receipt of their submissions the Panel would issue a Decision and Order to resolve their impasse. Pursuant to the Panel's determination, the parties submitted final offers and statements of position with evidence and arguments on the issues. The Panel has now considered the entire record.[2/]

1/ The reopener provision permits each side to renegotiate up to four existing articles, and to introduce two new ones. Only the Employer exercised its option to reopen the CBA by indicating it wanted to renegotiate four existing articles, among them, the Performance Management System article.

2/ In its statement of position, "the Union requests that the parties receive up to [3] weeks to respond to the other[']s

BACKGROUND

The Employer guarantees payment of non-forfeitable pension benefits in covered private sector defined-benefit pension plans. It is a self-financing, wholly-owned Government corporation that does not receive appropriated funds. The Union, currently affiliated with NAGE, represents approximately 500 bargaining-unit employees who work in such positions as attorney, accountant, actuary, and auditor, at grades GS-3 through -14. The parties' CBA is due to expire on February 19, 2009.

ISSUES AT IMPASSE

The parties disagree over 12 separate ground rules, including: (1) whether the Employer should provide the Union with written assurance that each article that is renegotiated is not impacted by any Question Concerning Representation (QCR) and thus is legal for the Employer to implement, and indemnify the Union from any liability or responsibility for articles it puts in place after the Union receives the written assurance; (2) when the parties should exchange their proposals; (3) the bargaining schedule; (4) the number of bargaining-team members and alternates on each side; (5) whether either party should be permitted to record the negotiating sessions; and (6) whether negotiations should be suspended until any data or negotiability disputes or unfair labor practice (ULP) charges are resolved in other forums.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes the following ground rules:

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submission." It provides no rationale in support of its request, which is inconsistent with the Panel's determination to resolve the dispute through single written submissions from the parties. Accordingly, the Union's request is hereby denied. In addition, each party submitted an unsolicited response to the other's single written submission; the Employer's was received at the Panel's offices on July 31, 2008, and the Union's on August 6, 2008. Neither of the parties' unsolicited responses was considered by the Panel in rendering its decision.

This agreement is made between the Pension Benefit Guaranty Corporation ("PBGC") and NAGE Local R3-77 (the "Union"), collectively known as "the Parties", and establishes the ground rules for mid-point negotiations between the Parties in accordance with Article 27, Section 2 of their collective bargaining agreement (CBA) effective February 19, 2006. The Parties are entering this agreement and negotiations pursuant to the determination by PBGC that the Parties are obligated to comply with the mid-point provisions of the CBA, notwithstanding any Questions Concerning Representation ("QCR") which may exist. Furthermore, PBGC warrants that it is legally authorized to implement changes in negotiated provisions of the CBA. PBGC also indemnifies the Union from any liability or responsibility for articles it puts in place after the Union receives the necessary written assurance. Negotiations will be conducted in accordance with the CBA and the Federal Service Labor-Management Relations Statute, 5 USC Chapter 71.

Section 1. No later than 6 weeks after execution of these ground rules the Parties shall submit proposals to the other party in accordance with Article 27, Section 2.3. of the CBA.

Section 2. Negotiating teams shall consist of five members for each team and up to five alternate members. The parties shall each designate their chief negotiator in accordance with their separate governing rules. Members of the union team that are PBGC employees shall be entitled to official time when engaged in negotiations to the extent they are otherwise in a duty status. PBGC will immediately inform each bargaining unit employee's supervisor of the importance of the employee's service on the negotiation team and the need to adjust workload to accommodate negotiations. Negotiating team members that are not PBGC employees will be on their own time and be responsible for all of their own expenses.

Section 3. Negotiations shall be held on PBGC premises in an appropriately sized conference room for three hours during regular duty hours, normally between 10 a.m. to 4 p.m. Negotiations shall begin within two week[s] after the submission of proposals as provided by Section 1 of these ground rules.

Negotiations will be conducted three days a week, Tuesday through Thursday. Negotiations will be conducted for one week (each day of negotiations will be designated as one negotiation session) recess for one week and then resume for one more week. This pattern will continue until an agreement or impasse is reached or until the parties agree otherwise. The parties may call for a caucus at any point in a negotiation period. Reasonable break periods will be taken during negotiation periods.

Section 4. Either party may request the presence of a subject matter expert (SME) during negotiations. SME's may only participate in negotiations to the extent that their specialized knowledge and presence is necessary for full and proper discussions between the parties. When an SME's services are no longer necessary, either party may request that the SME be excused, and that request shall be granted.

Section 5. Each party is responsible for keeping its own record of the negotiations. Either party may record negotiation sessions.

Section 6. The chief negotiator for each team shall initial an article as agreed on when negotiations on the entire article have been completed. Absent good cause shown, an article will not be re-opened once it has been initialed by the chief negotiators.

Section 7. PBGC shall not unilaterally implement any changes until the Union and PBGC reach agreement, or until any impasses and any negotiability appeals and unfair labor practice charges are completely resolved. Agreement is not considered reached until ratified by Union members. To encourage good faith negotiations by both parties of all proposed articles, there will be no partial implementation of any article. Prior to implementation, PBGC will provide the Union with written assurances that each article is not impacted by any Question Concerning Representation and thus is legal for PBGC to implement. PBGC also indemnifies the Union from any liability or responsibility for articles it puts in place after the Union receives the necessary written assurance. The Parties agree that no circumstance or exigency currently exists or is anticipated that requires PBGC to implement any

proposed change prior to negotiations. The Union does not waive its right to negotiate any proposal prior to its implementation.

Section 8. When the parties mutually agree that they have reached impasse in negotiations, the parties will jointly request the services of the Federal Mediation and Conciliation Service [FMCS] to assist them in reaching an agreement. This does not waive any appeal rights of either party.

Section 9. After impasse, each party will write up each of its proposals in best and final form. The parties will request the FSIP to use the traditional approach of resolving impasses by crafting a compromise or devising solutions that are in the best interests of all parties and their constituencies together. The parties will ask the FSIP not to use an article-by-article approach.

Section 10. The Union will be permitted to hold one briefing after each negotiation period. These briefings are intended to inform bargaining unit employees about the negotiations and to solicit and receive their input. Bargaining unit employees will be granted official time to attend the briefings. Additionally, the Union will be permitted to send periodic email updates to bargaining unit employees, in accordance with the Collective Bargaining Agreement.

Section 11. The Employer will respond to Union requests for information within no more than five workdays or as soon as practicable. Negotiations will be suspended while any data or negotiability disputes or ULP charges are pending.

Section 12. The Parties agree to establish a bank of up to 600 hours for use by the Union to obtain the help and expertise of the bargaining unit in preparing and reviewing provisions for negotiations.

Section 13. The Parties acknowledge that PBGC’s workplace policies and directives are applicable during the conduct of these mid-point negotiations.

Preliminarily, the Union asserts that the Panel "lacks jurisdiction" over the dispute "because the [p]arties are not at impasse." It contends that the parties are not at impasse because: (1) it is "unaware of the FMCS declaring that an impasse exists," and (2) the parties continued to negotiate after meeting with the FMCS mediator. Among other cases, the Union cites Department of the Treasury, Internal Revenue Service, Washington, D.C. and NTEU, Case No. 07 FSIP 10 (June 16, 2008)(IRS), to support its claim that the Panel "must relinquish jurisdiction over proposals that were not negotiated." In this regard, it states that the Employer refused to negotiate over the Union's proposed ground rule "that PBGC warrant that it is legally authorized to implement changes when there are pending [QCRs] as a result of NAGE's disclaimer of interest and the IUPE's election appeal."[3/] As the proposal is "essential and integral to the ground rules and the propriety of any bargaining, the [Panel] cannot order ground rules or order negotiations until and unless these issues are resolved."

On the merits of the ground rules issues, the Union's "indemnification" proposal "is fundamental and essential to the ground rules and is so integral to the bargaining process that it must be resolved before bargaining can occur." It is necessary because the Union may become the subject of an unfair labor practice (ULP) charge by an employee "on the ground that it was improper for the Union to bargain or deal with the Agency, and that the employee lost benefits from the Agency." Its adoption would prevent the Union from having to file a ULP charge against PBGC because the Agency would be liable for any damages the employee is entitled to as a result of the employee's ULP charge against the Union. Due to local representatives' vacation schedules and end-of-fiscal-year deadlines, requiring the parties to exchange proposals no later than 6 weeks after execution of the ground rules is more practical than the 2 weeks proposed by the Employer.

3/ This refers to two QCRs pending before the FLRA's Washington Regional Office relating to the Union's status as the exclusive representative of PBGC's bargaining unit. The first was filed by the Independent Union of Pension Employees (IUPE) contesting a representation election held in November 2003 that resulted in the Union's certification as the exclusive representative of the PBGC bargaining unit. The second QCR was filed by NAGE at the national level disclaiming its interest in continuing as the exclusive representative of the PBGC bargaining unit.

Realistically, however, the negotiations should be delayed until at least January 2009 or after the pending QCRs are resolved. The Union's bargaining team should include up to five members and five alternates "to minimize the disruption that leave and heavy end-of-year work duties will have on negotiations." Management should maintain the responsibility to expressly inform supervisors of the need to adjust workloads, particularly if the Employer's "aggressive" negotiating schedule is adopted, because the Union has "ongoing struggles with PBGC about this very issue." In addition, a 1-week on, 1-week off bargaining schedule "balances the Union's team members[']' other duties against the Union's need for sufficient help to represent the 500 member bargaining unit."

The Union would like to record the negotiation sessions "to enhance its representation efforts." The Employer also "must respect the Union's right to condition the execution of an agreement upon ratification of the Union membership." Equally important, implementation of any mid-term agreements should be delayed until any negotiability appeals are resolved.[4/] The Employer's corresponding proposal that the parties be permitted to mutually agree to implement individual articles prior to the completion of all negotiations "improperly encourages bad faith bargaining by the Agency." In this regard, the Employer could "make promises concerning articles that will remain on the table in order to induce the Union to agree to implementation of a particular article," only to "withdraw or reinterpret its promises" at a later time. It also opposes the Employer's proposal requiring the parties to jointly request the services of FMCS because it "is unlawful to force the Union to give up its right to have both parties bargain in good faith and to force FMCS assistance prematurely." Nor should the Panel be required to decide issues at impasse on an article-by-article basis. This is "bound to make the losing side unhappy and is an incentive for reopening articles over and over again in the future."

4/ Here, and elsewhere, in support of its position the Union cites the Panel's decision in Social Security Administration, Baltimore, Maryland and SSA General Committee, AFGE, AFL-CIO, Case No. 01 FSIP 130 (August 31, 2001), which references the FLRA's decision in Commander, Carswell Air Force Base, Texas and American Federation of Government Employees, Local 1364, 31 FLRA 620 (1988)(Carswell AFB).

The Union's proposal that management grant employees official time to attend briefings after every 1-week bargaining session "seeks to keep employees apprised of the changes on an ongoing basis." The parties should be required to suspend negotiations while any data or negotiability disputes or ULP charges are pending because progress will be unlikely "without resolution of key issues." Furthermore, in the absence of such a provision, "the Agency has an incentive to make arbitrary and unfounded allegations of nonnegotiability in order to steamroller the Union to accept Agency proposals or force a premature impasse." Its proposal for a bank of up to 600 hours for use by the Union to obtain the help and expertise of the bargaining unit in preparing and reviewing provisions for negotiations recognizes "the unfortunate reality of the state of labor relations at PBGC," which requires "a significant amount of time to complete the Union's preparation." Finally, because past and present Union officials have "suffered greatly at the hands of PBGC's labor management staff," the Union needs its proposed Section 13 "to ensure PBGC's conduct rules are complied with within the negotiations."

2. The Employer's Position

The following ground rules are proposed by the Employer:

> This agreement is made between the Pension Benefit Guaranty Corporation ("PBGC") and NAGE Local R3-77 (the "Union"), collectively known as "the Parties", and establishes the ground rules for mid-point negotiations between the Parties in accordance with Article 27, Section 2 of their collective bargaining agreement (CBA) effective February 19, 2006. The Parties are entering this agreement and negotiations pursuant to the determination by PBGC that the Parties are obligated to comply with the mid-point provisions of the CBA, notwithstanding any Questions Concerning Representation ("QCR") which may exist. Negotiations will be conducted in accordance with the CBA and the Federal Service Labor-Management Relations Statute, 5 USC Chapter 71.
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> Section 1. No later than two weeks after the execution of this agreement on ground rules the Parties shall submit proposals to the other party in accordance with Article 27, Section 2.3. of the CBA.

Section 2. Negotiating teams shall consist of four members for each team and up to two alternate members. The parties shall each designate their chief negotiator in accordance with their separate governing rules. Members of the union team that are PBGC employees shall be entitled to official time when engaged in negotiations to the extent they are otherwise in a duty status. PBGC will immediately inform each bargaining unit employee's supervisor of the importance of the employee's service on the negotiation team. Negotiating team members that are not PBGC employees will be on their own time and be responsible for all of their own expenses.

Section 3. Negotiations shall be held on PBGC premises in an appropriately sized conference room for three hours during regular duty hours, normally between 10 a.m. to 4 p.m. Negotiations shall begin within one week after the submission of proposals as provided by Section 1 of these ground rules. Negotiations will be conducted three days a week, Tuesday through Thursday. Negotiations will be conducted for three weeks (each day of negotiations will be designated as one negotiation session) recess for one week and then resume for a period of three more weeks. This pattern will continue until an agreement or impasse is reached or until the parties agree otherwise. The parties may call for a caucus at any point in a negotiation period. Reasonable break periods will be taken during negotiation periods.

Section 4. Either party may request the presence of a subject matter expert (SME) during negotiations. SME's may only participate in negotiations to the extent that their specialized knowledge and presence is necessary for full and proper discussions between the parties. When an SME's services are no longer necessary, either party may request that the SME be excused, and that request shall be granted.

Section 5. Each party is responsible for keeping its own record of the negotiations.

Section 6. The chief negotiator for each team shall initial an article as agreed on when negotiations on the entire article have been completed. Absent good

cause shown, an article will not be re-opened once it has been initialed by the chief negotiators.

Section 7. Upon completion of each article, the Parties may agree to implement that article before negotiations are complete.

Section 8. If open issues remain after the second three-week negotiation period as defined in Section 3, the parties will jointly request the services of the Federal Mediation and Conciliation Service to assist them in reaching an agreement.

Section 9. At the conclusion of any mediation before the FMCS, the parties shall submit "best and final" offers on any unresolved issues to the [FSIP] who shall award final provisions from among the "best and final" offers.

Section 10. The Union will be permitted to hold one briefing after each three week negotiation period. These briefings are intended to inform bargaining unit employees about the negotiations and to solicit and receive their input. Bargaining unit employees will be granted ½ hour official time to attend the briefings. Additionally, the Union will be permitted to send periodic email updates to bargaining unit employees, in accordance with the Collective Bargaining Agreement.

Section 11. The Employer will respond to Union requests for information within no more than five workdays or when practicable.

Overall, the Employer's final offer would expedite the mid-term negotiations that it first proposed in May 2007, and is consistent with the parties' previous ground rules agreements. The Union's "indemnification" proposals, on the other hand, are "both non-negotiable and unnecessary," and the Panel should order them withdrawn. As the FLRA has previously found, union indemnity proposals are non-negotiable "in the absence of specifically earmarked agency appropriations."[5/] Although it has

5/ The Employer cites the FLRA's decision in National Federation of Federal Employees Locals 642 *et al.* and U.S. Department of the Interior, Oregon State Office, Bureau of

repeatedly been asked to do so, the Union has failed to provide the legal basis for its proposals. The wording is unnecessary because the FLRA's regulations "spell out the rights and obligations" of the parties while representation proceedings are pending, and specifically address and eliminate any potential liability of the Union for engaging in mid-term negotiations required by the CBA.[6/] In addition, requiring PBGC to "warrant that it is legally authorized to implement changes in negotiated provisions" of the CBA "will only lead to later disputes." The last sentence of the Union's proposed Section 7 ground rule also is nonnegotiable because it would require management to waive its right under section 7106(a) of the Statute to determine that a "circumstance or exigency" exists. In addition, its proposal in Section 11 that negotiations be suspended while any data or negotiability disputes are pending "requires PBGC to either waive its statutory rights to respond to ULP charges and to fully consider data requests" or give up its CBA right to engage in mid-point negotiations. Its adoption also would put the Union in "sole control" of negotiations over management's mid-term proposals. As a whole, the disputed Union proposals "do nothing to advance or facilitate the lawful mid-point negotiations PBGC requested in May 2007," and fail to meet the FLRA's "touchstone" for ground rules proposals, *i.e.*, that they be offered in good faith and be designed to further the bargaining for which the ground rules are proposed.

CONCLUSION

We turn first to the Union's contention that the Panel lacks jurisdiction over the dispute because the parties are not at impasse. The contention appears to be based on certain misconceptions regarding statutory and regulatory requirements, among them, the mistaken belief that the FMCS must "declare an impasse" before the Panel may assert jurisdiction over a request for its assistance. In this regard, the Panel's regulations

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Land Management, 35 FLRA 1034 (1990) to support its assertion.

6/ 5 C.F.R. § 2422.34 of FLRA's regulations states:

> During the pendency of any representation proceeding, parties are obligated to maintain existing recognitions, adhere to the terms and conditions of existing [CBAs], and fulfill all other representational and bargaining responsibilities under the Statute.

define an impasse as "that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement."[7/] While the use of mediation clearly is a prerequisite for the Panel to conclude that parties are at impasse, there is no requirement that the FMCS or other third-party neutrals "declare an impasse."[8/] Under the Statute, it is the Panel's role to make factual findings as to whether an impasse exists. In the instant case, the parties met 11 times for a total of 16 hours during the period from October 2007 through January 2008, and received FMCS assistance on March 24, 2008, for about 1½ hours. The Union's claim that the parties are not at impasse constitutes mere disagreement with the factual findings the Panel made when it asserted jurisdiction over the Employer's request for assistance.

The Union's argument that the Panel must relinquish jurisdiction over the entire dispute because the Employer refused to bargain over its indemnification proposals is also unavailing.[9/] It appears to be based on the mistaken assumption that a union is entitled to a negotiability ruling by the FLRA whenever an employer raises a question concerning the legality

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7/ 5 C.F.R. § 2470.2(e).

8/ There is also no statutory or regulatory prohibition on parties continuing to meet bilaterally after a request for the Panel's assistance has been filed. In fact, throughout its nearly 30-year history the Panel has consistently encouraged parties to seek voluntary settlements during every phase of the Panel's process, including after the Panel has asserted jurisdiction over a dispute. This is demonstrated by the Panel's procedural determination letter to the parties in this case, which states: "The parties may seek a voluntary settlement at any time prior to the issuance of the Panel's decision and should immediately notify the Panel of any such agreement."

9/ Among other things, the cases the Union cites in support of its argument are inapposite. For example, in IRS the Panel declined to retain jurisdiction over certain employer proposals because they were never the subject of negotiations or mediation and, therefore, were not at impasse. Significantly, in this case it is the Employer who has raised questions concerning its duty to bargain over certain Union proposals.

of its proposals. Nor is there a statutory requirement that the FLRA determine the negotiability of union proposals before an employer can seek the Panel's assistance in resolving a bargaining impasse.[10/] As established by the FLRA in Carswell AFB, however, when a question concerning an employer's duty to bargain over a union proposal is raised in the course of its proceedings, the Panel may not order its adoption unless the FLRA previously has found a "substantively identical" proposal negotiable.[11/] It is within the Panel's discretion to avoid duty-to-bargain questions entirely by evaluating the arguments and evidence concerning the merits of such proposals. The issue of their legality only has to be addressed by the Panel in accordance with Carswell AFB if, after such evaluation, it is inclined to impose them on the parties. Accordingly, based on the foregoing analysis, the Union's contention that the Panel lacks jurisdiction over the dispute because the parties are not at impasse is hereby rejected.

Having carefully considered the evidence and arguments presented by the parties, we shall order the adoption of a modified version of the Employer's final offer to resolve the impasse. On the key issue, there is no need to address the legality of the indemnification proposals because the argument the Union provides in support of their adoption is speculative. Moreover, as the duly recognized exclusive representative of the bargaining unit, the Union's interests are adequately protected by 5 C.F.R. § 2422.34 of FLRA's regulations. Similarly, it is unnecessary to address the Employer's legal objections to the Union's proposals that would require it to agree that no

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10/ Moreover, while the Statute provides a mechanism for determining the negotiability of union proposals, there is no record in this case of the Union requesting a written declaration of nonnegotiability from the Employer concerning any of its proposals.

11/ As the FLRA stated in Carswell AFB, its approach:

> . . . is consistent with the Statute because it encourages prompt resolution of impasses involving duty-to-bargain issues which have already been ruled on by the [FLRA]. This approach also preserves the Panel's discretion as to whether or not to assert jurisdiction, and, as intended by the Statute, ensures that undecided duty-to-bargain issues will be resolved by the [FLRA].

"circumstance or exigency" currently exists (Union Section 7) and to suspend negotiations while data or negotiability disputes or ULP charges are pending (Union Section 11). In our view, the Union has failed to establish the need for its proposals on these matters.

While the Employer overall has proposed the more reasonable ground rules for conducting mid-term bargaining under the parties' reopener provision, due to vacation schedules and end-of-fiscal year deadlines, we are persuaded that the parties should be required to submit proposals no later than 4 weeks after execution of the ground rules agreement. In addition, given the parties' relationship, requiring supervisors to adjust the workloads of Union bargaining-team members should help to ensure that negotiations are not delayed because of problems in obtaining official time. As the parties have mutually agreed to introductory wording that the negotiations will be conducted in accordance with the Statute, neither side has demonstrated why it is necessary to adopt their respective proposals regarding FMCS assistance or subsequent impasse procedures that would restrict the Panel's authority. Finally, although the Union did not sufficiently support its proposal for a bank of 600 hours to obtain the bargaining unit's assistance, we nevertheless believe that its primary bargaining-team members should receive some official time to prepare for the negotiations. Accordingly, in the Order below the Employer's final offer has been modified consistent with the rationale provided above.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted by the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel, under 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the adoption of the following ground rules:

> This agreement is made between the Pension Benefit Guaranty Corporation ("PBGC") and NAGE Local R3-77 (the "Union"), collectively known as "the Parties", and establishes the ground rules for mid-point negotiations between the Parties in accordance with Article 27, Section 2 of their collective bargaining agreement (CBA) effective February 19, 2006. The Parties are entering this agreement and negotiations pursuant to the determination by PBGC that the Parties

are obligated to comply with the mid-point provisions of the CBA, notwithstanding any Questions Concerning Representation ("QCR") which may exist. Negotiations will be conducted in accordance with the CBA and the Federal Service Labor-Management Relations Statute, 5 USC Chapter 71.

Section 1. No later than four weeks after the execution of this agreement on ground rules the Parties shall submit proposals to the other party in accordance with Article 27, Section 2.3. of the CBA.

Section 2. Negotiating teams shall consist of four members for each team and up to two alternate members. The parties shall each designate their chief negotiator in accordance with their separate governing rules. Members of the union team that are PBGC employees shall be entitled to official time when engaged in negotiations to the extent they are otherwise in a duty status. PBGC will immediately inform each bargaining unit employee's supervisor of the importance of the employee's service on the negotiation team and the need to adjust workload to accommodate negotiations. Negotiating team members that are not PBGC employees will be on their own time and be responsible for all of their own expenses.

Section 3. Negotiations shall be held on PBGC premises in an appropriately sized conference room for three hours during regular duty hours, normally between 10 a.m. to 4 p.m. Negotiations shall begin within one week after the submission of proposals as provided by Section 1 of these ground rules. Negotiations will be conducted three days a week, Tuesday through Thursday. Negotiations will be conducted for three weeks (each day of negotiations will be designated as one negotiation session) recess for one week and then resume for a period of three more weeks. This pattern will continue until an agreement or impasse is reached or until the parties agree otherwise. The parties may call for a caucus at any point in a negotiation period. Reasonable break periods will be taken during negotiation periods.

Section 4. Either party may request the presence of a subject matter expert (SME) during negotiations. SME's may only participate in negotiations to the

extent that their specialized knowledge and presence is necessary for full and proper discussions between the parties. When an SME's services are no longer necessary, either party may request that the SME be excused, and that request shall be granted.

Section 5. Each party is responsible for keeping its own record of the negotiations.

Section 6. The chief negotiator for each team shall initial an article as agreed on when negotiations on the entire article have been completed. Absent good cause shown, an article will not be re-opened once it has been initialed by the chief negotiators.

Section 7. Upon completion of each article, the Parties may agree to implement that article before negotiations are complete.

Section 8. The Union will be permitted to hold one briefing after each three week negotiation period. These briefings are intended to inform bargaining unit employees about the negotiations and to solicit and receive their input. Bargaining unit employees will be granted ½ hour official time to attend the briefings. Additionally, the Union will be permitted to send periodic email updates to bargaining unit employees, in accordance with the Collective Bargaining Agreement.

Section 9. The Employer will respond to Union requests for information within no more than five workdays or when practicable.

Section 10. The Employer will grant each of the Union's four bargaining team members 8 hours of official time to prepare for the negotiations.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

August 22, 2008
Washington, D.C.