

Structure of Collective Bargaining Agreement (CBA) Negotiations

As established by the 2021 Ground Rules on CBA negotiations, 6 negotiators will meet 3 times a week for 24 weeks.

Federal Service Labor-Management Relations Statute (5 U.S.C. §7101-§7135) determines what is negotiable in the federal sector. The Federal Labor Relations Authority (FLRA) oversees the process, and has three components:

Authority

- Three members, Presidentially appointed, Senate confirmed
- Handles negotiability appeals

Office of the General Counsel

- Handles unfair labor practices (ULP)

Federal Service Impasse Panel (FSIP)

- 10 members of the Panel, Presidentially appointed, no Senate confirmation
- Currently includes former POPA president Pam Schwartz, and former President NTEU 245 (Trademark attorneys) Howard Friedman
- Handles negotiations impasses

What can't POPA negotiate?

Topics that are non-negotiable fall under management rights, 5 USC §7106

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws--

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from--

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

Note: The FLRA has already ruled that performance appraisal is an inherent part of an agency's right to assign work.

President Biden, however, issued EO 14003, which states that agencies may "elect" to bargain over "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work." 35 USC 7016(b). The PTO agreed in the ground rules to do so, but only so long as EO 14003 stays in effect

If a union makes a proposal, and an agency declines to bargain over that union proposal asserting non-negotiability, then the union may file a negotiability appeal with the FLRA.

What if the agency bargains in bad faith?

If the agency refuses to consider POPA's proposals, engages in regressive bargaining, or stalls reaching an agreement, then POPA can file a ULP charge with the FLRA. The ULP charge will be investigated by Office of the General Counsel.

What if POPA and the agency can't come to an agreement in 24 weeks?

Parties will request assistance of the Federal Mediation and Conciliation Service (FMCS), who mediates both public and private sector union negotiations. The FMCS will assign a mediator to facilitate agreement. If issues remain that cannot be agreed on, then the mediator will declare the parties at impasse and clear the path to the FSIP.

The FSIP has the non-reviewable authority to impose an agreement.

How is the CBA finalized?

Once an agreement is reached, POPA members will have the opportunity to review and ratify the contract. Only dues paying members may vote to ratify the contract.

If it is not ratified by POPA members, then the parties must start over and renegotiate the CBA.

If it is ratified, then agency head review will determine if any part of the contract is a violation of government rule/regulation. If the review rejects any provision of the contract, then the entire agreement is rejected. The parties can renegotiate the agreement in its entirety or renegotiate the provisions at issue. If POPA disagrees with the agency's position, then we can file negotiability appeal. If the union does nothing, the agreement goes into effect except for provisions that the agency head found to be non-negotiable.