

POPA/USPTO Ground Rules for Term Contract Negotiations

An Agreement

July 16, 2021

1. Parties and Scope

The United States Patent and Trademark Office (USPTO or Agency) and the Patent Office Professional Association (POPA or Union) agree to the following provisions concerning ground rules governing the negotiation of a collective bargaining agreement (CBA, agreement, or contract) between the parties.

2. Bargaining Teams

2.a. Each party will designate a Chief Negotiator who will be present at all negotiations, mediation, and Federal Service Impasses Panel (FSIP or Panel) proceedings. If a Chief Negotiator is unavailable for any session, an Acting Chief Negotiator will be designated and identified to the other party, prior to or at the beginning of the bargaining session. Throughout these ground rules, the term "Chief Negotiator" will refer to both regular and acting chief negotiators.

2.b. The Agency and the Union each will designate their initial team members and provide notification to the other party as soon as reasonably possible, but in any event within ten (10) business days following notification of the approval of this Ground Rules agreement on Agency Head Review.

2.c. All official written communications, including room and schedule changes, exchanged proposals, and the like will be directed to the Chief Negotiator and all other team members. E-mails are considered written communications.

2.d. The Agency and the Union teams shall each have up to six (6) negotiators (including the Chief Negotiators) at the bargaining table during bilateral negotiations, and up to seven (7) for mediation and Panel proceedings if needed. The parties may change the composition of their teams at any time during the negotiations, mediation, and Panel proceedings.

2.e. Each party may also have two (2) subject matter experts (SMEs) at a time participate in negotiations in connection with an article being negotiated. This is in addition to the six negotiators. The SMEs shall be identified to the other party by name, title, and area of expertise as soon as possible, but generally at least 24 hours in advance of the bargaining session in which he or she will participate. Neither party may challenge who the other party designates as a SME.

2.f. Team members must be either employees or contractors of the Agency or the Union. The term “contractors” includes outside counsel.

2.g. Only team members as provided in 2.d. above, and SMEs as provided in 2.e. above may be present during negotiations.

3. Official Time and Performance Considerations

3.a. Before a POPA bargaining unit employee uses official time to assist with or negotiate the CBA, POPA will notify the designated representative for the Agency of that employee’s name. Employees will record official time used for this purpose in the Agency’s time and attendance system using time codes designated by the Agency.

3.b. POPA bargaining unit employees will notify their first-line supervisors in advance of any official time they expect to use on preparation, negotiation, mediation and Panel proceedings related to the CBA.

3.c. Time spent working on preparation or negotiation of the CBA is not a basis for waiver of any Performance Appraisal Plan (PAP) requirements. Time spent on preparation or negotiating the CBA will be treated as absences for the purpose of qualifying team members for a “5 Day Pause” or a “FMLA-type Pause” as provided in the Docket Management element of the Patent Examiner PAP and PAP Guidelines.

3.c.1. Upon implementation of the new Patent Examiner PAP as provided in the *January 24, 2019 agreement entitled “Implementation of Increased Examination time, Portfolio-based Routing, and New Utility Examiner Performance Appraisal Plan”*, time spent on preparation or negotiation of the CBA will be treated as absence for the purpose of qualifying team members for a “7 Day Pause,” or the above “5 Day Pause,” depending on the length of the absence.

3.d. Applications may be reassigned if there is a reasonable expectation that they will exceed the ceiling control days during the time that the examiner is considered to be absent as set forth in 3.c. and 3.c.1. above, or for other business needs. Examiners and supervisors will discuss docket issues before transferring any application onto or away from a docket.

3.e. No time for preparation or negotiation may be recorded during hours when a team member is working overtime, compensatory time or credit hours. No time for mediation or Panel proceedings may be recorded during hours when a team member is working overtime or compensatory time. When a 3rd party such as the FMCS or FSIP requires the presence of a team member for more than 8 hours in a day, up to an additional 4 hours may be recorded on that day as credit hours, provided that the team member is on the IFP work schedule. Up to 24 credit hours may be carried over from one pay period to the next.

3.f. In addition to the official time mandated by statute for negotiations and previously agreed upon bank time, the Agency will authorize up to 1600 hours of official time for POPA bargaining

unit members to prepare for bargaining or otherwise participate in the negotiation process. This time is available for use starting on the day that the Agency provides their substantive proposals to POPA as provided in 4.b. below, and will be available until the parties implement the agreement.

3.g. In addition to the actual time with the mediator or FSIP member, for which official time is mandated by statute, the Agency will grant the actual, reasonable amount of preparation time for team members to prepare for mediation and impasse.

3h. Additional bargaining unit members assisting the negotiation team will use statutory or preparation time authorized in this agreement, as appropriate, or may use bank time to assist the negotiation team.

4. Exchange of Substantive Proposals and Clarification

4.a. For purposes of these ground rules:

4.a.i. "days" means business days, which are Monday through Friday excluding holidays and any day the Office is closed for any reason. If a deadline falls on a holiday, Saturday, Sunday or a day the Office is closed, the deadline will be the next business day. For the purpose of counting days, day 1 is the day after the triggering event.

4.a.ii. "weeks" means a seven-day period starting with the day following the triggering event; and

4.a.iii. "full weeks" means a seven-day period starting with the Sunday following the triggering event.

4.b. The Agency will provide their substantive proposals for the CBA to POPA no sooner than 4 full weeks following notification of the approval of this Ground Rules agreement on Agency Head Review.

4.c. Proposals will be submitted electronically. Proposals will be submitted in at least 12 point font. Each article will start on a new page.

4.d. After the Agency submits their substantive proposals for the CBA to POPA, there will be a seven (7) week period during which POPA can request up to 36 hours of meetings with the Agency to request clarification of the Agency's proposals. Requests for meetings in a given week will be made by 9:00 am Monday by POPA and will include the topic or articles to be discussed.

4.e. POPA's substantive proposals and counterproposals will be provided to the Agency by the end of the seven (7) week period in 4.d. above. POPA's substantive proposals will be organized using the article numbers used in the Agency's proposals. If POPA proposes topics not raised by the Agency, each topic will be submitted as a unique article given a sequential number beginning with the first number not used by the Agency.

4.f. There shall be a two-week recess following the 4.e. step in the process.

5. Bargaining Schedule

5.a. Negotiation Schedule:

5.a.i. The parties shall commence bargaining on the Tuesday following the recess provided in 4.f. above.

5.a.ii. Bargaining sessions shall take place on Tuesdays, Wednesdays, and Thursdays from 9:30 a.m. until 4:00 p.m., except Federal holidays.

5.a.iii. Each day shall have a one-hour break and at least two 15-minute comfort breaks.

5.b. The bargaining schedule listed in Section 5.a.ii. shall be maintained for a total of twenty-four (24) weeks of bargaining.

5.c. The parties shall endeavor to limit total combined caucus time on negotiating days to no more than ninety (90) minutes.

6. Attendance and Priorities

6.a.i. Until the Agency has ended expanded telework (i.e., additionally permitted telework beyond what is permitted by permanent telework programs) and entered a phase when employees may freely return to on-campus buildings without advanced permission or capacity restrictions, negotiations will be conducted remotely via WebEx (or a successor program). Remote participation is permitted only from the participant's approved alternate work site. Remote participants will take reasonable steps to ensure privacy during negotiations.

6.a.ii. Once the Agency has ended expanded telework and entered a phase when employees may freely return to on-campus buildings without advanced permission or capacity restrictions, negotiations will be primarily conducted in person. At least half of each party's bargaining team members attending a bargaining session, including a chief negotiator, will be physically present during negotiations to be conducted at USPTO headquarters. Other team members and subject matter experts may participate remotely via WebEx (or a successor program). Upon mutual agreement, any negotiation session may be conducted with more remote participants or fully virtually. A party may not unreasonably refuse a request for additional remote participation.

6.a.iii. The parties acknowledge that the phases of reopening might revert to more restrictive statuses based on the current situation. In the event the Agency shifts between the phases identified in 6.a.i. and 6.a.ii., including potential backwards movement to expanded telework, the relevant paragraph above will apply.

6.b. To the extent possible, management will arrange for all POPA negotiating team members to receive mandatory training at the same training session. For an individual team member with a mandatory training requirement, management will arrange for the team member to take the

training on a day when negotiations are not scheduled. If that fails, management will arrange for the team member to take the training via electronic means. If other arrangements have failed, management may postpone negotiations so that the team member shall be present at the mandatory training. These postponements may include extending the breaks provided in Section 5.a.iii. (so long as each negotiator has a break of approximately one hour) or adjusting the start and/or end times for negotiations. These postponements do not count as postponements available to either party under 6.d. below.

6.c. Team members who elect to attend optional training are expected to arrange their schedule to allow attendance at negotiation sessions. Alternatively, POPA may have a substitute on official time as discussed in 2.d.above.

6.d. Each party shall have the right to postpone negotiations for any reason for up to seven (7) total negotiation days. These discretionary postponements may be used in half-day or whole day increments.

6.e. In addition to the discretionary postponements described in 6.d., negotiations may be delayed or postponed in the following instances:

6.e.i. If the Alexandria Headquarters is closed for any reason, bargaining shall not take place during the closure.

6.e.ii. Either party may postpone negotiations on days on which the Alexandria Headquarters is operating under an unscheduled leave or unscheduled telework status.

6.e.iii. In the event OPM announces a delayed arrival affecting the Alexandria Headquarters, the morning session will begin at the later of 10:00 a.m., or the time the government opens if OPM announces a fixed reporting time. If OPM announces an early dismissal, the parties will discuss when to end the session. In no event, however, will a session end later than thirty minutes before a fixed departure time if OPM closes the government at a set time.

6.f. Bargaining will be extended by a half or whole day for each half or whole day that bargaining is postponed for any reason.

7. Space, Facilities, and Services

7.a. Negotiations will be conducted in space provided by the Agency. The Agency will also provide the Union with a caucus room in the same building as the negotiation room, and on the same floor as the negotiation room if practicable. The caucus room will have a phone, computer with docking station, two (2) monitors, and computer peripherals, access to PTOnet, access to internet, access to color printer, access to copier and lockable file cabinet.

7.b. POPA shall be provided reasonable use of government property and resources consistent with current policies concerning use by voluntary employee organizations, including office or meeting space, phones, WebEx, photoduplication, computers and computer system without

charge in order to prepare for and negotiate the new collective bargaining agreement (including any subsequent FMCS and FSIP proceedings).

7.c. The parties will minimize the use of cell phones and other electronic devices during negotiations. These devices may be used, however, for emergencies or to advance the negotiations. Devices should be kept on silent or vibrate to minimize distraction.

8. Conduct of Negotiations

8.a. The parties will discuss each article or topic in sequence. The parties will continue discussion of each article or topic until either agreement is reached or discussions have stalled. Either party may indicate that the discussion has stalled. In the event of stalled discussions, the parties shall move to the next article or topic. Further discussion on stalled articles or topics is not precluded and may be resumed when practicable.

8.b. Either party may reasonably defer discussion of a topic or article if a team member or subject matter expert is absent and deemed necessary for the full discussion of the article or topic. The party requesting the deferral shall solely determine if the team member or subject matter expert is necessary for the full discussion. The requesting party shall identify those team members or subject matter experts whom are necessary at the time the deferral is requested. The deferred article or topic will be taken up after the completion of any ongoing discussion of another article or topic or as soon as practicable thereafter.

8.c.i. The Agency agrees that it will bargain in good faith over proposals that constitute permissive subjects of negotiation under 5 U.S.C. section 7106(b)(1) so long as Executive Order No. 14003 remains in effect.

8.c.ii. The Agency agrees that it will not object to the FSIP subsequently exercising jurisdiction proposals on 7106(b)(1) topics on the basis that they are permissive subjects of negotiation should impasse be invoked, in accordance with OPM guidance, so long as Executive Order No. 14003 remains in effect.

8.d. Unless mutually agreed otherwise by the parties, the following rules will be observed in exchanging proposals:

8.d.i. The parties will exchange initial and revised proposals electronically, at least in Microsoft Word or a replacement software program issued by the Office for word processing. Each party is responsible for printing the other party's proposals for their own use, except that the proposing party should bring copies for all attendees on both teams when introducing a proposal during a bargaining session. The party presenting a document is responsible for providing an electronic copy to anyone participating remotely in a bargaining session.

8.d.ii. The parties will endeavor to use highlighting or track changes to indicate changes to a proposal or proposals. Generally, changes will be indicated relative to the most

recently previously exchanged version of a proposal. Documents will include a header or footer containing an identifying date and origin (Agency or POPA).

8.e. Tentative Agreements:

8.e.i. The parties' Chief Negotiators will initial and date each proposal or group of proposals when tentative agreement is reached.

8.e.ii. Within 2 business days after initialing each article, the Agency will upload .pdf and Word versions of the article to a designated SharePoint site or equivalent tool that permits equal access for management and the Union; lock the copies for editing and/or tracks changes made to the copies after uploading; and email the .pdf and Word versions to both the management and Union team members. POPA will provide a list of team members to be used for this purpose.

8.e.iii. Both parties may review the copies for inaccurate content, suggested clarification of language, or errors and bring them to the attention of the other party for correction without reopening the proposal(s).

8.f. Notes and Recording:

8.f.i. Each party may keep its own notes and may use laptop computers or iPads or similar devices for this purpose. The parties will endeavor to limit noise generated by such devices, including by using noiseless keyboards, using devices in silent mode, or otherwise.

8.f.ii. Electronic recording, audio or video, of negotiation sessions or meetings between the parties pursuant to the negotiations is prohibited.

9. Mediation and Impasse Procedures

9.a. Mediation, if necessary, shall be requested through the Federal Mediation and Conciliation Service (FMCS). The parties will request mediation at the end of the negotiation period (see 5.b. above), unless the parties agree otherwise. Negotiations will continue while arrangements are being made with the FMCS unless the parties agree that further discussions will not be beneficial.

9.b. Agreements reached during mediation will be initialed by the Chief Negotiators and treated as tentative agreements as described in 8.e. above.

9.c. Either party may request that the FMCS release the bargaining dispute to the Federal Service Impasses Panel at any time. The FMCS will determine when the dispute is released to the FSIP.

10. Negotiability Disputes

The parties will attempt to resolve negotiability disputes informally during the bargaining sessions. The Union may appeal a declaration of non-negotiability to the Authority. Negotiations over other unrelated issues shall continue. Negotiations on articles containing at least one proposal subject to a negotiability appeal shall not be considered as having been concluded until a decision is rendered by the FLRA on the negotiability appeal and any subsequent negotiations of the language that was the subject of the appeal, or alternative language, are complete. Once the FLRA issues a decision, negotiations will continue and agreed upon or imposed provisions will be included with other provisions prior to union ratification of the agreement.

11. Ratification and Execution

11.a. Once negotiations, mediation and FSIP proceedings have been completed, the Agency will compile all articles that have been either initialed by the Chief Negotiators or imposed by the FSIP into a Word document along with a .pdf version and provide both files to POPA. If the Agency identifies edits it desires to correct, such as numbering, grammar, spelling and readability, the Agency will provide an additional Word document using track changes, showing the language as agreed to along with the desired editorial changes.

11.a.i. The Union will have five weeks to check the completeness of the document, to make sure that no changes have been made (e.g., all agreed upon or imposed provisions are included in the agreement and that there is no missing language or language added), to review the Agency's proposed editorial changes, and identify proposed editorial changes. If the Union agrees with a management change, it may accept the change to show agreement. The Union should also indicate in the same document any additional editorial changes to correct numbering, grammar, spelling and readability, that it wishes the Agency to consider.

11.a.ii. Any discrepancies from the provisions initialed or imposed by the panel that are identified by the Union will be corrected by the Agency within 3 weeks from the date the Union sends back the word document indicating an error, if the omission or addition is supported by the agreed or imposed language. The initialed document or the decision of the FSIP will govern any disputes. The Agency will also consider changes proposed by the Union during this period. Agreed upon changes will be accepted and the revised document again submitted to POPA.

11.a.iii. Over the next five weeks, the parties shall then meet to resolve each parties' outstanding proposed editorial changes. Absent agreement to proposed editorial changes, the final version of the agreement will contain the language as initialed by the

chief negotiators or imposed by the FSIP. The Agency shall update the draft agreement to reflect the agreed upon changes, and provide a copy to the Union for ratification.

11.b. The Union will report the results of its ratification vote to the Agency within six weeks (the "ratification period"). Understanding that it is the Union's obligation to complete the ratification process as quickly as possible, if exigent circumstances outside the Union's control prevent the Union from concluding the ratification vote within the ratification period, the Union will promptly notify the Agency before the end of the ratification period. The Union will report the results promptly after the ratification vote is completed.

11.c. The Agency will make available without charge to the Union half of the Clara Barton auditorium for at least two one-half day sessions during the first three weeks of the ratification period. Alternatively, the Agency will make available to the Union a full-size first floor conference center in any of the Remsen, Jefferson, Knox or Randolph Buildings for 10 half-day sessions during the first three weeks of the ratification period. Each session shall allow for in-person attendance, as well as webcast capability, capable of supporting up to 999 viewers at a time. Half of the sessions will be made available in the afternoon. Additionally, the Agency will make available a conference room at any of the Remsen, Jefferson, Knox or Randolph Buildings at least the size of Knox 4D44 for five (5) business days. The Agency will create a POPACBA@uspto.gov e-mail box, which the Union may use to send and receive messages related to the collective bargaining agreement.

11.d. If the membership fails to ratify the proposed agreement, the parties will resume negotiations in accordance with these ground rules except that sections 4.b., 4.d., 4.e., 4.f, 5.a.i, and 5.b. will not apply. The Union will identify which provisions of the rejected agreement it seeks to renegotiate. Once the agreement is ratified, the parties will execute the agreement within two weeks.

12. Agency Head Review

12.a. The head of the Agency shall have 30 days from the date that the agreement is executed to review the contract consistent with 5 U.S.C. §7114(c).

12.b. In the event that the head of the Agency disapproves the agreement, no portion of the agreement will be implemented while the parties resume negotiations or until any negotiability appeal is resolved by the FLRA, unless otherwise agreed. If neither party requests bargaining over the Agreement within two weeks of the disapproval and there is no negotiability appeal pending before the FLRA, the provisions of the contract that were not disapproved will be implemented by the parties.

13. Ground Rules Disputes

If the parties have a disagreement concerning the application and/or interpretation of these ground rules that they would otherwise submit through the negotiated grievance procedure, the concerned party will notify the other party in writing and the parties agree to attempt to resolve the issue informally. If not resolved informally by the parties, the dispute will be handled through application to an arbitrator as provided for in the arbitration procedure set forth in the CBA. Fees for this arbitration will be shared equally by the parties.

Signatures

For POPA

**Richard J.
Hirn** Digitally signed by
Richard J. Hirn
Date: 2021.07.16
09:24:46 -04'00'

Richard Hirn
General Counsel

07/15/2021

Date

For the Agency

**Users, Dalke,
David** Digitally signed by Users,
Dalke, David
Date: 2021.07.15
16:30:22 -04'00'

David Dalke
Chief Negotiator

07/15/2021

Date