

SOCIAL SECURITY ADMINISTRATION  
AND  
ASSOCIATION OF ADMINISTRATIVE LAW JUDGES (IFPTE)

FMCS case numbers  
190702-08688, 190716-09716  
190716-09105

Hearings in this case were held on February 20 and 21, 2020. The Agency was represented by Kenneth Bullock and Daniel Hutman. The Union was represented by Daniel Benjamin. Briefs were filed on April 6, 2020.

ISSUE

The parties did not agree on the phrasing of the issue. The Agency proposed that the issue be 1. " Does the preponderance of the evidence establish that the Agency violated 5 U.S.C. 7116(a)(1),(5), or (8) in its responses to the following Union requests for information ("RFI"): a. November 20, 2018 RFI requests numbered 18,19,22,23, and 27, b. March 11, 2019 requests numbered 1 (a) and 8 (b). March 11 2019 RFI titled "information request-Appointment of Agency Negotiation team." 2. If the Union establishes by the preponderance of the evidence that the Agency committed any of the violations specified above, what remedies are authorized by law, and what authorized remedy or remedies are appropriate?"

The Union proposed the following issue. Did the Agency commit an unfair labor practice in violation of Article 10, section 3 of the parties collective bargaining agreement (CBA) and or violate federal laws with regard to the following requests for Information (RFI). " The Union listed the same RFI's as the Agency had listed as 1. " 2 If the Union establishes that the Agency committed any of the violations above, what is the appropriate remedy?"

Because the parties did not agree on the issue I decide that the issue is as follows:  
Did the Agency violate Federal law and/or the Collective Bargaining Agreement in its responses to the following Union requests for Information:  
A Requests 18,19,22,23 and 27 on 11/20/18.  
B Requests 1(a) and 8 (b) on 3/11, 19  
C Appointment of Agency Negotiation team on 3/11/19  
If so, what is the appropriate remedy?

FACTS

The parties stipulated to the facts. Their stipulation which is essentially a chronology of events ,is attached as Joint Exhibit 15 pages 1 through 5.. Other facts were offered by both parties during the hearings in the form of testimony and exhibits.

In preparation for term negotiations the parties agreed to a Memorandum of Understanding (MOU) concerning ground rules for bargaining. On three occasions the Union made requests for information (RFI). The " Particularized Need" given by Union for the initial 27 RFI's on November 20, 2018 was "this data will be used to prepare proposals related to CBA negotiations ...the data will inform the bargaining team on how effective the current CBA provisions are related to leave, scheduling telework, and disciplinary matters as well as hardship details and transfers... This information request is for the purpose of negotiating the collective bargaining agreement as the exclusive representative of the bargaining unit. This data is necessary to prepare proposals for CBA negotiations. It will illustrate

deficiencies with current CBA provisions and indicate opportunities for more effective provisions" All 27 of the initial RFI's in the Unions November 20, 2018 RFI were satisfied except for requests 18, 19, 22, 23 and 27. The Union filed a grievance based on the Agency's refusal to satisfy these requests. The Union filed a second RFI on March 11, 2019. All of the requests in that RFI were satisfied except for 1(a) and 8 (b). The Union filed a second grievance based on the Agency's refusal to satisfy these two requests. The Union filed a third RFI regarding the Appointment of Agency negotiation team. That request was not satisfied. On May 9, 2019 the Union filed a third grievance. All three of the grievances were denied by the Agency.

#### THE DISPUTED RESPONSES TO THE UNRESOLVED REQUESTS FOR INFORMATION

RFI 18. " In Fiscal years 2016, 2017, and 2018 the disposition numbers of the Deputy chief judge, Regional Administrative Law Judges, and all Associate Regional Judges."

Agency Response. " This data can be viewed by the public on the following web site [http://www.ssa.gov/zppeals/data/sts/03-ALJ-Disposition Data.html](http://www.ssa.gov/zppeals/data/sts/03-ALJ-Disposition%20Data.html). The disposition data for prior fiscal years can be accessed by clicking on the "Archived Data Files Link and viewing the ALJ Disposition Data "for the years requested"

Union Reply " ...Again the Union asserts its right to the information....Your link did not provide data specific to the request. The Agency has the complete list of all of those judges holding these positions per FY 16, 17 and 18. The Union does not have to speculate on who held these positions, and drill down into a data base to obtain the data...the Union believes you do have the data...the Union asserts that the information is normally maintained and reasonably available..."

RFI 19 "Communication between SSA and OPM in relation to changes in the ALJ position descriptions after the implementation of the 2018 Executive Order related to ALJs being hired as competitive service."

Agency Response.

"The Information request does not contain any explanation as to why this information is necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining . Accordingly, the request fails to articulate a particularized need for this information, and the Agency declines to provide this information..."

Union Reply

"The nature of the appointment of members of our bargaining unit is of importance to the Union. Understanding the position descriptions of our bargaining unit, considering and anticipating any differences in the position description of an excepted service judge as compared to a competitive service judge, is foundational to the bargaining unit itself. As we enter into contract negotiations clarity on the bargaining unit, its position descriptions, is at the heart of our role as the exclusive representative of the bargaining unit. There are no competing interests, privacy or policy, which would prevent the disclosure of these communications. It is normally maintained and reasonably available. The Union did not have the benefit of this information when preparing its proposals. This has interfered with our statutory duties. We are now entering negotiations and we need this data in relation to core issues

related to the make up of the bargaining unit. We will use this data in formulating counter proposals. This relates to level of recognition and RIF matters.”

RFI 22 “What is the agency’s estimated cost for training a new judge.

Agency Response

The Agency provided statistics in response.

Union Reply

“It appears that you may have left off the cost of travel and per diem, as well as relocation payments( moving costs, payment of selling and purchase fees) for newly hired judges who came from the federal sector for newly hired . Again , we ask that you provide the average cost of travel and per diem, as well as average expenditure of relocation costs per judge for those who were entitled to and received it. As an ALJ who attended new judge training in 2026, the data you provided was inadequate. We need this data in relation to possible counter proposals. This data illustrates the impact to the agency when there is turnover of judges, cost of judicial education/training....”

RFI 23 “ Number of judges who received a reasonable accommodation by scheduling a reduced number of cases fiscal years 2016, 2017, and 2018”

Agency Response

“The requested information does not exist as it is not captured in any existing document or database maintained by SSA”

Union Reply

“ As the information request process is to be interactive, the union requests the summary reports the Agency does have with redacted data of all reasonable accommodation requests made by judges in fiscal years 2016, 2017 and 2018.”

RFI 27 “Average number of hours representatives are compensated for a case pursuant to fee petitions fiscal years 2016, 2017 and 2018.”

Agency Response

“This information request does not contain any explanation as to why this information is necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. Accordingly, the request fails to articulate a particularized , and the Agency declines to provide this information.”

Union Reply

“ My supplemental particularized in this submission for # 27 is in addition to the previously asserted particularized need explanations. It is that the Union must prepare to negotiate the two parties telework proposals, as well as other proposals related to hardship details, leave, and possibly other proposals and in the development of counter proposals. This obviously deals directly our representational duty.

It is normally maintained and reasonably available. This information is insightful to the amount of time needed to perform the duties of ALJs in the bargaining unit. The agency had provided no compelling policy reasons for refusing to provide the data. "

The Union added to this explanation " When we consider scheduling requirements for telework, it is necessary to consider what amount of time it takes to prepare for, hear, decide and issue a decision. Receiving the data on how many hours claimant representatives are putting into preparing for and appearing at the hearings provides valuable information, because it offers an insightful comparison as to how much time a judge requires for the same case. The Agency is compensating representatives for their time. The Union would like to know how much time that is. There is no competing privacy or public policy against providing this information. It is normally maintained and reasonably available. This clearly relates to our representational duty of contract negotiations for our bargaining unit To whatever extent the agency does not feel that it would be helpful or informative, the Union in its roles as the exclusive representative has concluded that it is of value and again asks for the information

RFI 1 (a) " In reference to the 7-year term agency proposal, provide supporting data to support need for this length of term. Provide Data to show how this length supports agency mission"

#### Agency Response

"To the extent such data exists, the Agency is not obligated to provide it as it relates to collective bargaining pursuant to 5 U.S.C. 7114(b)(4)(C)"

#### Union Reply

" In your response, you first refuse to confirm or deny whether data exist. Then you state you are not obligated to provide it with no further explanation. The Agency is required to interact with the Union..." The Union quotes a passage from IRS, Kansas City, 50 FLRA 670-71 (1995). Finally the Union writes "The Agency's response is not adequate and does not meet its statutory requirements..."

RFI 8 (b) "Provide the current agency criteria and/or policy under which an employee is placed under "close supervision "

#### Agency Response

" Your request in 8 b above is far too broad and your statements lack the requisite specificity needed for the Agency to determine what information you are requesting."

#### Union Reply

The Agency's response causes great concern to the Union. The Agency has proposed that a judge will not be eligible for telework if he or she "does not require close supervision" The Agency must know what it means or else it could not have been proposed in good faith.. To state that our request is "too broad and lacks requisite specificity" is at best disingenuous. If the Agency has actually not defined "close supervision" of a judge, the Agency must say so. The information request is interactive. See IRS, Kansas City. " In its grievance the Union added" ...the request for definition of diminished performance has yet to be provided...the information is required to assist with the Unions ability to negotiate with the Agency..."

#### RFI 3/11/19

" Pursuant to 7114(b) of the Federal Service Labor Management relations statute ...we request any and all documents, e mails, memoranda, etc. that designated, assigned directed and /or appointed the members of the agency's bargaining team to engage in Negotiations with AALJ, IFPTE ....Particularized

Need; The Union wishes to ascertain and/or confirm the placement of the members of the agency's collective bargaining team to ensure they are properly empowered to negotiate on the agency's behalf. Such documentation is normally maintained, reasonably available and in no way relates to Privacy Act concerns. There are no counter vailing policy interests against the disclosure. Such documentation in no way can be seen as advice or guidance"

#### Agency Response

Your information request...fails to articulate an adequate particularized need for information related to the appointment of the Agency's bargaining team. You are seeking information concerning employees outside of your bargaining unit, and who are "confidential employees " under 5 USC 7103(13). Moreover, you are requesting confidential management information "relating to collective bargaining "under 5 USC 7114(b)(4)(c). Therefore the Agency is not obligated to provide any of the requested information."

#### Union Grievance

" The information is normally maintained. It is reasonably available. It does not constitute advice or strategy. It is necessary for full and proper understanding and negotiations within the scope of collective bargaining, as it demonstrates the authority of those at the bargaining table. It does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, related to collective bargaining. It directly relates to representational duties because it entirely deals with term negotiations. The delegation cannot be "confidential " as it is the designation of those representing themselves as the appropriate negotiation team members...The Union has a good faith doubt that the bargaining team has the authority to bind the agency in the current negotiations..."

#### Agency Denial

In its denial the Agency cites 5 USC 7114 (b)( 4) (c) and several decisions of the FLRA and concludes that the Union did not establish a particularized need for the information requested....the information sought concerns employees-members of the agency's negotiation team who are outside of AALJ's bargaining unit and who act in a confidential capacity..." citing 5 U.S.C. 7103(a)(13).

Testimony by witnesses differed on the subject of oral communication about the meaning of and the response to the disputed RFI's. Mr Taylor, the Center Director in the Office of Labor-Management and Employee Relations testified that he was in charge of responding to the RFI's and was on the Agency bargaining committee in the recent negotiations. He testified that "multiple times he attempted to discuss the Union's requests, either on a formal or informal way with the Union....first with a phone call...Judge McIntosh and Judge Mincey...The response was...You have our requests, and so respond to those...in writing...at least once, if not multiple times, at the bargaining team I renewed the request..." TR 264-267. The Agency introduced as an exhibit a memo written by Mr Taylor to members of his staff in which he asserted that union representatives refused to discuss the RFI's. Judge McIntosh, President of the Union, testified that "...I did not refuse to substantively respond to his inquiries...his rendition of it is not accurate...there was no attempt to engage in a substantive conversation about the content of these requests..." TR 454-255.

5 U.S. Code 7114(b)



The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining;

Article 10, section 3 of the Collective Bargaining Agreement

"The AALJ has the right to file, as a grievance under this contract, any alleged unfair labor practices,(ULP) When it does so, however, it waives its right to file an unfair labor practice charge over the same Issue with the appropriate authorities under law and regulation."

#### POSITIONS OF THE PARTIES

##### UNION

1 The Agency committed unfair labor practices by bad faith bargaining in violation of the requirements of section 7114 (b) of the Statute by refusing to provide the information requested by the union in RFIs 18,19, 22, 23, 27, 1a, 8(b) and the appointment of Agency negotiation team.

The Statute requires that an Agency must , upon request, furnish to a union data that is (1) normally maintained by the agency; (2) reasonably available; (3) necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (4) not guidance, advice, counsel or training to management.

The Union's initial explanation and responses to the Agencies denial to provide the information requested in each of the RFIs was in compliance with the requirements of section 7114(b) as these requirements have been applied by the FLRA. RFI 18 . The Agency did not provide the information requested even though they did not contend that the information was not normally maintained and reasonably available and the Union on three occasions advised the agency that the public data base did not contain the requested information

RFI 19. The initial denial by the Agency on the basis of the alleged failure to articulate a particularized need for the requested information about its own bargaining unit members was answered by the Union in explicit detail. The Agency continued to refuse to provide the requested information

RFI 22 The Agency supplied incomplete information and when the Union clarified the information it was requesting the Agency refused to provide the missing information and gave no explanation for doing so

RFI 23 The Agency refused to supply the requested information because it alleged that the information did not exist. The Agency continued to refuse to supply the requested information after the Union requested only summary reports which were by law the Agency had to maintain

RFI 27 The Agency reused to supply the information based on its assertion that the union did not explain why this information was needed even after the Union responded to the denial by explaining that the request pertained to the negotiation of the telework proposals and that the information was normally maintained and reasonably available and explained why the requested information was related to bargaining.

RFI 1 (a).The Union asked the Agency to give its reasons for proposing a longer term contract than usual. The Agency refused because the information was not related to collective bargaining citing 5 U.S.C. 7114 (b) (4) (C). The Union cited 50 F.L.R.A. 670. A year later the agency filed that same information with the impasse panel in support of its own proposal.

RFI 8 (b) The Union asked the Agency to explain the criteria it would follow in enforcing one of the Agencies own proposals concerning telework. The Agency refused on the basis that the request was too broad and lacked specificity. The union answered in detail explaining that the Agencies own proposal would have a great impact of teleworking. The Agency did not respond.

Agency Bargaining Committee . The Union explained in detail the reason that they needed the information and expanded its explanation in the grievance. The Agency refused on the basis that the members of the Agency committee were not in the bargaining unit citing 5 US 7103

The Union in its brief cited more than thirty F.L.R.A. and court decisions . These decisions establish ten principles in applying the statute.

1 The duty to furnish information to a union applies to both information needed to negotiate an agreement and data relevant to its administration

2 Information is normally maintained if the agency possesses and maintains the information.

3 Unions requesting information must show a particularized need for the information and for agencies to show countervailing anti-disclosure interests

4 The union's responsibility in its interests in the requested information requires more than a conclusory assertion and must permit an agency to make a reasoned judgement as to whether disclosure of the information is required.

5 A union's request need not be so specific as to reveal its strategies

6 An agency is responsible for establishing any countervailing anti-disclosure interests and, like the union, must do so in a more than a conclusory way

7 The agency's duty to respond on a timely basis and to clearly set out any grounds for denial

8 The agency must either furnish the information, ask for clarification of the request, or identify its countervailing or other anti-disclosure interest , or inform the union that the information does not exist or is not maintained by the agency

9 Failure to promptly respond is bad faith bargaining under section 7116(a) of the statute

10 The duty to request and supply information is part and parcel of the fundamental duty to bargain.

#### AGENCY

1 The Union failed to adequately articulate particularized need for several of the requests.

2 Three of the requests sought information that did not exist.

3 Two of the requests sought information that constituted " guidance, advice, counsel, or training" related to collective bargaining, which is statutorily exempt from disclosure.

4 Union hearing testimony explaining the reasons they requested several of the contested RFI's was not the same as the reasons in the written explanations they provided to the Agency when they explained the reasons they were filing or had filed the contested RFI's.

5 The Union refused to discuss the reasons they had filed the contested RFI's when asked to do so during negotiations and the process leading to and during the filing of grievances leading to this arbitration.

6 The Agency complied with its statutory obligations in responding to the Union's information requests

7 The grievances should be denied.

#### OPINION

I will rely solely on the RFI's, the responses, the grievances and the response to the grievances in making my decision. While there is a dispute about whether discussions took place about the RFI's the exchanged documents clearly reflect the positions of the parties in making and responding to the RFI's. There was no testimony that any bargaining position or proposal was impacted by whatever oral communication, if any, took place between the parties.

#### RFI 18

The Agency responded to this RFI by providing a web site. The Agency did not respond when the Union thereafter advised that the web site did not contain the information that it sought. The Agency gave no reason for not providing the requested information that the Union clearly identified as not ascertainable on the web site. The Agency did not assert any of the defenses available to an agency in denying to furnish the requested information in 7114(b) (4) cases. An agency can not satisfy the RFI by simply saying no. 50 FLRA at 670 (1995) The Agency therefore was in violation of section 7114(b)(4).

#### RFI 19

The Union asked for internal private communications between two government agencies. The particularized need standard requires that the request does not constitute guidance, advise, counsel or training provided for management officials or supervisors relating to collective bargaining. While the



Union explained in its reply to the denial by the Agency why it wanted the information communications between Agencies constitutes advice or counsel to management officials or supervisors related to collective bargaining. I must conclude therefore that the Agency was not in violation of the statute when it denied the requested information.

#### RFI 22

The Agency provided information in response to this RFI but when the Union explained that one of the statistics was in error the Agency did not respond and gave no reason for not providing the requested statistic. I can not consider the reasonable explanation given for the first time at the hearing for not responding. The Agency did not give any of the specified acceptable reasons in 7114(b) for not responding by giving the correct information which it obviously possessed and maintained. . The Agency therefore was in violation of section 7114(b)(4).

#### RFI 23

The Agency asserted that the information sought by the union "...does not exist ..."

The Union responded that summary reports with that information did exist. No information or testimony was provided at the hearing that proved that the Agency response was false. In the absence of such proof I can not conclude that the reason given by the Agency in its response, which is one of the approved grounds for not responding to a RFI in 5 USC 7114, constituted a violation.

#### RFI 27

Clearly this RFI in its original form did not meet the particularized need standard. The union response to the denial of the RFI did meet the standard of telling the Agency what the Union wants, why it wants it and what they intend to do with the information. The reason given in testimony by the Agency witness for not providing this information would, if given to the Union in response to this RFI , have required me to conclude that the denial of this RFI was not a violation of the applicable law. However , the failure of the Agency to give an reason acceptable under the statute requires me to conclude that the Agency's failure to explain its denial when responding to the Union's explanation constitutes an violation of 5 U.S.C. 7114. " The Agency is responsible for establishing any countervailing anti-disclosure interest and like the union, must do so in more than a conclusory way..."64 FLRA No 45. "...Like a union, an agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying no..."50 FLRA No 86

#### RFI 1 (a)

Clearly the question of duration is an essential subject of bargaining. The question is whether the Union satisfied the Particularized Need standard?

The Union explained what it wanted, why it wanted it and what they intended to do with the information which was to bargain about duration which is a subject within the scope of bargaining .This is the essence of establishing a Particularized Need 51 FLRA 1467 . 36 FLRA 943. I also note that the Agency subsequently gave statistics about the cost of negotiations to the impasse panel to justify their

position on the question of duration.. Had the Agency given the same information it subsequently gave to the Impasse panel to the Union in response to this RFI there would not be a violation. In that the union satisfied the requirements of establishing a Particularized Need I must conclude that the Agency's refusal to provide the requested information was a violation.

RFI 8 (B) The Union requested that the Agency define the criteria under an Agency proposal for the denial of an employee to telework if the employee is "under close supervision " The Union in this RFI explained why it needed the information about a proposal by the Agency which is clearly within the scope of collective bargaining, relating to carrying out its representational responsibilities under the statute. The Agency did not change its response or reply to the union's detailed explanation after the denial by the Agency. I must conclude that the Agency's refusal to provide the requested information was a violation

RFI 3/11/19

One of the requirements under 7114,(b),(4) compelling an agency to provide information requested by a union is that it is necessary for full and proper discussion , understanding and negotiation of subjects within the scope of collective bargaining. Each party may designate the members of its bargaining committee. Nether party may question or object to the members of the other parties negotiation committee. Here the Union is essentially asking the Agency to provide it with a legal memoranda justifying its right to appoint any representatives because "...the Union has a good faith doubt that The bargaining team has the authority to bind the agency in the current negotiations..." In that this is not a subject within the scope of collective bargaining I conclude that the Agency has not violated the statute.

#### AWARD

The Agency violated Federal law in responding to RFI's 18, 22; 27, 1(a) and 8 (b).

The Agency did not violate Federal law in its responses to RFI's 19, 23 and Agency committee.

#### REMEDY

The Union asked for the following remedies:

A That the agency cease and desist from:

a Failing and refusing to respond to requests for information by the Union

b Failing and refusing to bargain in good faith with the Union

c In any like or related manner, interfering with, restraining, or coercing bargaining-unit employees in the exercise of their rights assured by the Statute

B That the agency take the following affirmative action in order to effectuate the purposes and policies of the Statute

a Respond to all RFI's at issue in this arbitration within thirty days of this award.

b Following the receipt of such responses by the Union, bargain in good faith with the Union by returning to the bargaining table, resuming term negotiations, allotting time for such negotiations consistent with the time allotting time for such negotiations consistent with the time allotted in the parties prior ground rules and deeming all initial proposals, subsequent offers, agreed articles, and impasse filings withdrawn so that the Union has the benefit of negotiating with all information requested in the RFIs.

c Post a notice signed by the Commissioner at each office where bargaining unit representatives are located, that the Agency violated the statute and was ordered to cease and desist, and make an identical electronic posting via government email within the bargaining unit using a form of posting ordered by the FLRA in SSA Baltimore MD 60 FLRA 674,683-84 (2005).

The Agency contended that "The agency is aware of no precedent that would justify intruding on the panel's jurisdiction and disrupting the statutory term bargaining process under these circumstances. An order directing the agency to resume bargaining of the impasse articles would create a harmful incentive for other federal-sector unions to file voluminous information requests during term bargaining and then to use the grievance-arbitration process to reverse the outcome of the bargaining. Such a result would be contrary to the letter and intent of the collective bargaining process that Congress enacted in the Civil Service Reform Act of 1978."

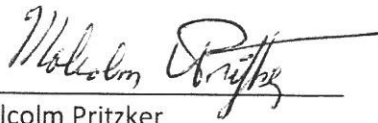
My function and responsibility as an arbitrator is to make a decision about the issue in the case and if I conclude that the grievance or grievances have merit to specify the remedy for violations. I can not comment about possible future behavior by the parties. I therefore can not grant the remedies in Section A and B b of the Union's suggested remedy by ruling that the Agency cease and desist from acting in any way in the future. If the Agency again violates the collective bargaining agreement or Federal law the Union may file a grievance which may lead to a future hearing with a different arbitrator.

I do not have the right to interfere with the procedures of the Impasse panel or to intervene in the collective bargaining process and I will not order the reopening of the negotiations between the parties.

Based on the above I order the following remedies:

The Agency is to provide the information sought in the RFI's for which I ruled the Agency was in violation within thirty calendar days of this decision.

The Agency is to post a notice for sixty calendar days advising bargaining unit employees of the results of this decision.



Malcolm Pritzker

May 4, 2020

ASSOCIATION OF ADMINISTRATIVE  
LAW JUDGES, IFPTE,

Grievant,

and

SOCIAL SECURITY ADMINISTRATION,

Agency

FMCS Case Numbers

190702-08688

190716-09104

190716-09105

Arbitrator: Malcolm L. Pritzker

February 20, 2020

### Stipulation of Facts

#### A. Background on Term Negotiations

1. The Union represents non-management administrative law judges (“ALJs”) in the Agency’s Office of Hearings Operations (“OHO”), formerly known as the Office of Disability Adjudication and Review (“ODAR”).

2. There are approximately 1,200 ALJs in the bargaining unit. Bargaining unit ALJs hear cases in over 160 hearing offices spread across the country.

3. A Hearing Office Chief ALJ (“HOCALJ”) manages and administers each hearing office. The hearing offices in turn are assigned to Regions. A Regional Chief ALJ (“RCALJ”) manages and administers each OHO region.

4. In 2013 the Union and the Agency entered into a National Agreement, which is **Joint Exhibit 1.**

5. On June 18, 2018, the Agency gave notice to the Union of its intent to terminate the National Agreement as of September 30, 2018, and to negotiate a new National Agreement.

6. The parties executed a Memorandum of Understanding establishing ground rules for the new term bargaining on October 18, 2018. The memorandum is **Joint Exhibit 2**. The parties agreed to exchange initial proposed articles and lists of their bargaining team members on February 22, 2019 and to commence negotiations on March 12, 2019.

7. The parties exchanged lists of bargaining team members and proposed articles on February 22, 2019. The parties conducted term bargaining pursuant to the ground rules between March and June 2019 (with some immaterial modifications made to the exact locations and dates set forth in the ground rules).

8. These negotiations resulted in signed agreements on 22 of the 31 articles and the Preamble.

9. In June 2019, the parties employed the assistance of a mediator appointed by the Federal Mediation and Conciliation Service, as required by the ground rules. The mediator subsequently certified an impasse had been reached as to the remaining 9 articles:

Articles 1 (Duration and Termination), 5 (Employee Rights), 9 (Official Time), 13 (Judicial Function), 14 (Hours of Work), 15 (Telework), 18 (Leave), 20 (Reassignments and Hardships), and 29 (Facilities and Services).

10. In October 2019, the Agency requested that the Federal Service Impasses Panel ("the Panel") assert jurisdiction.

11. The parties completed their written submissions to the Panel on February 7 and 14, 2020.

**B. The November 2018 Request for Information**

12. Prior to commencing term negotiations, on November 20, 2018, the Union submitted a Request for Information (“RFI”) to the Agency under 5 U.S.C. § 7114(b)(4) (“November 2018 RFI”). The November 2018 RFI is **Joint Exhibit 3**. It contains requests numbered 1-27. At issue in this arbitration are requests 18, 19, 22, 23, and 27.

13. Between January 19, 2019 and March 1, 2019, the parties exchanged email regarding November 2018 RFI requests 18, 19, 22, 23, and 27. The email chain is **Joint Exhibit 4**.

14. On June 3, 2019, the Union filed a grievance regarding November 2018 RFI requests 18, 19, 22, 23, and 27 at Step 3 of the parties’ grievance procedure, because the case involved a nationwide issue, and Article 10, Section 3 of the National Agreement permits Unfair Labor Practices charges (ULPs) to be filed as grievances. The grievance is **Joint Exhibit 5**.

15. On July 3, 2019, the Agency denied the grievance. The denial is **Joint Exhibit 6**.

16. On July 10, 2019, the Union invoked arbitration.

**C. The March 2019 Request for Information**

17. After the parties had exchanged initial offers, the Union submitted a RFI to the Agency on March 11, 2019 (“March 2019 RFI”). The March RFI is **Joint Exhibit 7**. It contains requests numbered 1-11. At issue in this arbitration are March 2019 RFI requests 1(a) and 8(b).

18. Between March 11, 2019 and April 18, 2019, the parties exchanged email regarding March 2019 RFI requests 1(a) and 8(b). The email chain (including an attachment to the final email) is **Joint Exhibit 8**.



19. On June 3, 2019, the Union filed a grievance regarding March 2019 RFI requests 1(a) and 8(b) at Step 3 of the parties' grievance procedure because the case involved a nationwide issue and the National Agreement permits ULPs to be filed as grievances. The grievance is **Joint Exhibit 9**. (The relevant grievance also referenced request 8(c). That request in turn referenced language in the Agency's then-operative draft contract. In its last-best offer, the Agency subsequently dropped that language; accordingly, the Union is not pursuing request 8(c) in this arbitration.)

20. On July 3, 2019, the Agency denied the grievance. The Agency's denial is **Joint Exhibit 10**.

21. On July 10, 2019, the Union invoked arbitration.

**D. The Negotiation Team Request for Information**

22. In preparation for the term negotiations, and after the parties had exchanged initial offers, the Union submitted an RFI to the Agency dated March 11, 2019 entitled "Information Request – Appointment of Agency Negotiation Team" ("Negotiation Team RFI"). The Negotiation Team RFI is **Joint Exhibit 11**. It contains a single request.

23. On April 1, 2019, the Agency responded to the Negotiation Team RFI by stating that the Agency was not obligated to provide the requested information. The Agency's response is **Joint Exhibit 12**.

24. On May 9, 2019, the Union filed a grievance regarding the Negotiation Team RFI at Step 3 of the parties' grievance procedure, because the case involved a nationwide issue, and the National Agreement permits ULPs to be filed as grievances. The grievance is **Joint Exhibit 13**.

25. On June 18, 2019, the Agency denied the grievance. The denial is **Joint Exhibit 14**.

26. On June 28, 2019, the Union invoked arbitration.

**E. Consolidation**

27. The Union and Agency subsequently stipulated to consolidating these three arbitrations into a single arbitration.