

MEMORANDUM OF UNDERSTANDING

GROUND RULES FOR AGREEMENTS BETWEEN: THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AND THE ECONOMIC RESEARCH SERVICE (ERS) & THE NATIONAL INSTITUTE OF FOOD AND AGRICULTURE (NIFA) UNITED STATES DEPARTMENT OF AGRICULTURE

I. PURPOSE

- A. This Memorandum of Understanding (MOU) is entered into by and between the Economic Research Service (ERS) and the National Institute of Food and Agriculture (NIFA), United States Department of Agriculture (USDA) hereinafter "the Agency" and the American Federation of Government Employees (AFGE), Local 3403, herein after " Union" pursuant to the provisions of Chapter 71, 5 USC. Together, the Agency and the Union shall be referred to as the Parties.
- B. This MOU will govern the ground rules for all negotiations related to the reassignment of employees of the ERS and NIFA. This MOU will become effective upon Agency Head Review and approval, and, will remain in full force and effect until a new MOU is agreed upon by the Parties. This MOU may be re-opened only by mutual agreement.
- C. Nothing in this MOU may be read as a waiver to any of the statutory rights possessed by either Party.

II. NEGOTIATION TEAMS

- A. Each party agrees it will bear expense associate with the negotiations, except as otherwise provided in these ground rules.
- B. Each Party shall designate its own bargaining team representatives; The Parties agree to notify the opposite Party who has been designated to serve as its Chief Negotiator. Each team will normally consist of up to six (6) team members and may be increased only by mutual consent of the Chief Negotiators; however, both Parties are entitled to have the same number of team members.
- C. The Chief Negotiator for each Party will provide leadership and be responsible for the conduct of their members. When discussing written proposals, the Chief Negotiator on each team will be the spokesperson for their team. Each Chief Negotiator is also responsible for the following, with respect to that party's team:
 - 1. Maintaining order during all discussions and negotiations.
 - 2. Providing notice to the other Party of the negotiating team members.
 - 3. Designating and appointing their Alternate Chief Negotiator and Alternate members of the Negotiating team.

3. Calling caucuses and scheduling meal periods/breaks.
 4. Requesting mediation assistance through the Federal Mediation Conciliation Service (FMCS) after thorough discussion between the parties.
 5. Declaring that impasse has been reached.
 6. The Chief Negotiators have the ability to make binding decisions by initialing and dating all language on which the parties have reached agreement.
- D. Subject Matter Experts (SMEs) may be utilized by either party to provide information on particular subjects under negotiation. The party utilizing the SME will notify the other party in advance of who the SME is and when the SME is to attend.

III. NEGOTIATION SCHEDULE AND CONDUCT

- A. The Parties agree to comply with 5 U.S.C. § 7101(b) and 5 U.S.C. § 7114(b)(1) and (3). To this end, the Parties will approach negotiations with a sincere resolve to reach an agreement and agree to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays.
- B. The Parties will schedule an initial meeting within fifteen (15) days following the exchange of written proposals. This meeting will be devoted to discussing the general substance of each Party's proposals.
- C. Negotiation sessions will usually be held for five (5) consecutive day sessions normally Monday-Friday 8:30am to 5:00pm. By mutual agreement, the Chief Negotiators may make changes to these schedules. Lunches and breaks will be scheduled by mutual agreement of the Chief Negotiator of each Party. No negotiations will be held on Federal holidays.
- D. The Parties agree to negotiate at the ERS located at Patriot Plaza III in Washington, DC, for two (2) bargaining sessions as described in Section C above. The Agency will be responsible for scheduling the meeting room and will notify the Union of the meeting location one (1) week prior to the negotiation session.
- E. The Parties are expected to be punctual and remain at the table throughout bargaining.
- F. Either Party may call a caucus at any time without the consent of the other Party. The Parties agree to make a good faith effort to keep the number and length of caucuses to a minimum. Unless by mutual agreement of the Chief Negotiators, caucuses will not exceed 30 minutes. A caucus will not be the first order of business at any negotiating session, unless mutually agreed to. When either party elects to caucus, the management team will withdraw from the room to ensure privacy to the Union team.
- G. Recording devices, verbatim transcripts, or minutes of the proceedings will not be used. Each side may make its own notes.

IV. NEGOTIATION PROCEDURES

- A. Initial proposals will be sent to the Union's Chief Negotiator and the Agency via Microsoft Word e-mail attachment.

- B. The topics identified in initial proposals submitted will be the only matters considered for negotiation purposes. Unless agreed to by the Parties, no additional topics may be submitted after the submission date Section A above.
- C. Proposals may include amendments to information regarding plans that have been communicated to employees.
- D. All proposals and counter proposals provided to the other Party will be in electronic format and these proposals will also be distributed in hard copy when meeting in-person. In each subsequent counter-proposal, the Parties will annotate language from the prior proposal that has been accepted/agreed upon. Such agreed upon language will be shown as clean language without mark-up or annotation in subsequent proposals. Proposals will be identified as either Union or Agency, dated and numbered successively.
- E. During negotiations, it is expected that the Party making a proposal and counterproposal will be prepared to present and explain any such proposal and counterproposal.
- F. The Parties will strive to make the language in the agreement as clear, simple, and understandable as possible.
- G. Upon reaching agreement on any proposal, the Union's Chief Negotiator and the Agency's Chief Negotiator will initial and date two (2) copies of the agreed-upon language. Each Party will retain one copy for their record.
- H. Once a proposal is initialed, it will be considered closed unless the Union's Chief Negotiator and the Agency's Chief Negotiator mutually agree to reconsider or revise it. All agreements are tentative until the Parties reach agreement on all matters raised in the Demand to Bargain as a whole.

V. NEGOTIABILITY APPEALS

- A. Pursuant to 5 U.S.C. § 7117, the Agency has the right to declare proposals non-negotiable. If unable to resolve a negotiability issue, the Union may request the Agency provide a written assertion of non-negotiability consistent with law, rule and regulation.
- B. Before pursuing the involvement of the Federal Labor Relations Authority (FLRA) in any negotiability dispute, the Parties may explore alternative language that will achieve the purpose of the proposal and would not render the proposal non-negotiable. If the Parties are unable to settle a negotiability dispute, the Union reserves the right to file a negotiability appeal with the FLRA in accordance with 5 U.S.C. § 7117.
- C. Any pending negotiability appeal before the FLRA will not delay continued bargaining on other, unrelated, matters. The Parties will make every attempt to reach agreement on all other matters unrelated to the negotiability appeal and initial/sign agreed to language once agreement is reached.

The Parties agree to consummate a final agreement regardless of any pending negotiability disputes. The agreement will be reopened, as appropriate, pursuant to a decision by the FLRA that warrants further bargaining on the disputed issue.

VI. IMPASSE PROCEDURES

- A. When it is determined that an impasse has been reached on any proposal and all bargaining has concluded as outlined in the Negotiation Schedule and Conduct above, the services of the FMCS will be requested by either or both parties. If the services of the FMCS do not resolve the impasse, either party may request the assistance from the Federal Service Impasse Panel (FSIP) to settle the impasse in

accordance with 5 USC 7119.

VII. OFFICIAL TIME

- A. Members of the Union's negotiating team who are also bargaining unit employees of the ERS and NIFA will be authorized official time for negotiations pursuant to 5 U.S.C. § 7131(a), including for attendance at mediation and impasse proceedings, during time the employee would otherwise be in duty status. Negotiation team members may spend caucus time during bargaining sessions [after the beginning of the negotiation session and prior to the conclusion of the negotiation session] on official time, consistent with 5 USC § 7131(a), but time spent in such sessions will not otherwise alter or extend the bargaining schedule set forth in this Agreement. To ensure team members are available for bargaining sessions, individual managers will consider reasonable requests for adjustments to employee work schedules. Official time will be recorded as "Term Negotiations."
- B. Bargaining unit employees who are on the negotiating team will present to their supervisor, in advance of negotiation sessions, the negotiation schedule and any anticipated time needed for Union bargaining preparation prior to negotiations.
- C. Overtime and compensatory time are not authorized for negotiations or related activities.
- D. Bargaining unit members may request additional official time on a case by case basis. Such requests will be made in writing identifying the specific need and number of hours that are expected to be required.
- E. If impasse is reached, and the Parties seek third party assistance to resolve the impasse, additional Official Time will be requested and granted as identified in VII. Official Time, Section C above

VIII. CONCLUSION OF NEGOTIATIONS

- A. Once an Agreement is signed and dated by both Parties, the Agreement will be transmitted to the Agency Head. The Agency will have 30 calendar days to complete Agency Head Review pursuant to 5 U.S.C. § 7114(c).
- B. If the Agency Head disapproves any provision(s) of the Agreement under 5 U.S.C. § 7114(c), the Parties agree to implement all provisions of the agreement not disapproved by the Agency.
 - a. The Parties may return to bargaining to negotiate over the provision(s) disapproved under 5 U.S.C. § 7114(c), within seven (7) days of the Agency's written notice to the Union. Any subsequent agreement reached will be resubmitted to the Agency Head for Agency Head Review pursuant to 5 U.S.C. § 7114(c).

C. If the Union files a petition for review following the Agency Head's disapproval of a provision(s) under 5 U.S.C. § 7114(c), the Parties agree to sever the challenged provision(s) from the Agreement and the remaining provisions will go into effect.

IX. EFFECTIVE DATE AND DURATION OF AGREEMENT

A. If the agreement is not approved or disapproved within the thirty (30) day period, the Agreement will take effect on the thirty-first (31) day and shall be binding on the Agency and the Union pursuant to 5 USC § 7114(c)(1) & (3).

B. These ground rules will apply to all mid-term negotiations until superseded by the National Collective Bargaining Agreement. These ground rules may be changed by agreement. Any change or waiver to these ground rules will be reduced in writing and signed by both parties.

C. The effective date of the agreement will be clearly stated on the Agreement's cover page.

Kevin Hunt, Acting Vice President
ERS, AFGE Local 3403

Chris Grondalski, Labor Relations Officer
ERS

Date

Date

Wesley Dean, Acting Vice President
NIFA, AFGE Local 3403

Date