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OUR FAVORITE APPROPRIATE ARRANGEMENT PROPOSALS (Pt. 2- Postponing Implementation)

When management finally notifies the union of a proposed midterm change it wishes to make pursuant to its 7106 management rights, it usually is very eager to implement it. Often, it is so eager that it will make concessions just to get the union's agreement. Because the union typically has other many reasons for delaying implementation, a skilled union negotiator needs to know the variety of appropriate arrangement proposals FLRA has approved as negotiable that permit it to delay implementation of the change even after agreement is reached. Here are some of our favorites.

First, while the law technically permits management to implement once it has reached agreement with the union, the law also permits the union to propose that the newly reached agreement and underlying change not be implemented immediately, but postponed. For example,

The new standards shall become effective on the first day of the month following the date this agreement is signed. (NFFE, 46 FLRA 1170 (1993))

The FLRA has decided that setting an effective date or an agreement or even some component of it is a purely procedural step necessary to implement the parties' agreement. As such, the proposal does not interfere with the Agency's rights to direct employees or assign work.

The union also can insist that all the requirements of law be respected before the change is implemented. That would include designating "the date of execution" that triggers the 30-day time limits for agency head review. If it is not specified by agreement, it is the date on which no further action is necessary to finalize a complete agreement. Once the date arrives the clock begins ticking for the agency head review and once that has been completed the union is entitled to negotiate the day the agreement is effective or implemented and within that agreement to address, within reason, when the elements of the employer's proposed change would be implemented. Check out POPA, 41 FLRA 795 (1991) for a good review of all that.

Second, the union can propose that the proposed change be implemented on a trial basis for a short period and then require the employer to return to the bargaining table before it is expanded to all impacted employees.

For a trial period of two (2) months, five (5) title 2 CRs and five (5) title 16 CRs will be assigned as primary interviewers. At the conclusion of the trial period the parties will meet and consult over whether to continue this interviewing arrangement, or to revert back to the prior assigned numbers (5 title 2 and 6 title 16). AFGI, 55 FLRA 999(1990)

Third, the union can propose that certain steps be taken after agreement is reached but before the management-proposed change can be implemented. Here are two examples,

Prior to implementation of the requirements of OPNAV Instruction 5100.12D, notice is to be given to all affected employees. This notice shall be by printed notice in the "Grapevine" for at least 4 issues prior to the implementation date. Additionally, written notification is to be distributed to all affected employees on an individual basis. This notice may be similar to those previously distributed by the Mare Island Police Department but must contain the effective date of the new requirement. These notices should not be distributed directly to the motorcycle operators while they are driving, i.e. entering or exiting the shipyard, since this creates an unsafe condition. They should either be mailed to all employees with motorcycles registered on Mare Island or be attached to motorcycles parked on Mare Island. IFPTE, 32 FLRA 380 (1988)

Although this proposal delays slightly the implementation of the change, it does not prevent or restrict the Agency from requiring motorcycle riders to wear the specified safety equipment or from implementing the traffic safety regulation on a particular date. Thus, it is within the duty to bargain.

The following shall apply when offering non-competitive details to both classified and unclassified positions.

1. The Administration will list the qualifications and performance attributes (e.g. relevant experience, knowledge, skills and training) it determines to be necessary to perform the detail. They will be objective and job-related. AFGE, 41 FLRA 618 (1999)

This proposal permits the employer to delay drafting the qualifications and attributes until it wants to detail employees.

Fourth, the Authority has recognize the union has some, but not much, freedom to propose that the employer give the employees a reasonable period of time to work under the new procedures before it evaluates them under the new procedures. FLRA held the following proposal negotiable, but only because nothing in the express language or the record indicated that an employee's performance during the "grace period" could not be evaluated or viewed as the basis for a performance based action once the period was over.

When an employee is reassigned or transferred the employee will be given an appropriate training period of not less than ninety (90) days to acquire the skills and proficiency necessary to satisfactorily perform the duties and responsibilities of the new position. AFSCME, 15 FLRA 541 (1984)

Finally, the FLRA permits the union to demand that the agency stay implementation of a change until the satisfaction of any statutory obligations, e.g., bargaining, or appeal processes are complete.

ACEA proposes continuation with the “status quo” of assigning an education technician to accompany kindergarten students to physical education classes until good faith negotiations have been completed. This will ensure all kindergarten students have the assistance of full time education technicians when students are attending physical education program. ACEA, 61 FLRA 327 (2005)

No disciplinary action will be taken against unit employees who test positive for drug use until the employee has had an opportunity to challenge the validity or accuracy of the drug test, has had an opportunity to present the results of independent drug tests to supervisory personnel, and has exhausted all grievance arbitration and Merit System[s] Protection Board appeal procedures. IFPTE, 45 FLRA 225 (1994)

There will be no implementation at the local level until after resolution of the Grievance of the Parties filed or to be filed by the [Union] at the national level regarding [the Agency's] duty to bargain at the national level or until [the Agency] bargains at the National level, whichever occurs first. AFGE, 48 FLRA 232 (1993)

However, “stay” proposals are not negotiable when implementation of the management action to be delayed is necessary for the functioning of the agency.