

**Office of Congressional Workplace Rights
LA 200, John Adams Building
110 Second Street, SE Washington, DC 20540-1999**

Fraternal Order of Police, District of Columbia Lodge No. 1, U.S. Capitol Police Labor Committee)	
Petitioner,)	
and)	Case No. 25-LM-04 (NG)
United State Capitol Police)	
Respondent.)	
)	

Before the Board of Directors: Barbara Childs Wallace, Chair; Susan S. Robfogel; Alan V. Friedman; Roberta L. Holzwarth; Barbara L. Camens, Members.

DECISION AND ORDER OF THE BOARD OF DIRECTORS

The instant negotiability petition, involving one proposal, was filed by the Fraternal Order of Police, District of Columbia Lodge No. 1, U.S. Capitol Police Labor Committee (FOP or Union) after the United States Capitol Police (USCP or Department) took the position that the proposal was outside its duty to bargain. The petition comes before the Board of Directors of the Office of Congressional Workplace Rights (OCWR) pursuant to § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute, as applied by section 220(c)(1) of the Congressional Accountability Act, 2 U.S.C. § 1351(c)(1).

I. Statement of the Case

On March 1, 2019, the USCP issued Directive 2053.023. The Directive sets forth USCP policy regarding the scheduling of employees to work on holidays, substitution of employees scheduled to work on holidays, and the qualifications of an employee seeking to substitute for another on a holiday. Among the Directive’s requirements, a substitute employee cannot “earn additional duty or work more than one tour of duty on the holiday.” In other words, substitute employees are prohibited from working double shifts on holidays.

Notwithstanding this requirement, from late 2021 through late 2024, the USCP issued bulletins and other communications suspending the prohibition on holiday doubles and allowing employees, including substitutes, to work holiday doubles.

On July 7, 2025, the Assistant Chief informed the Union that the USCP was reinstating the Directive as it pertained to double shifts on holidays. On July 15, 2025, the Union requested official notice of the change so that the parties could bargain. The USCP gave notice via email on July 17, 2025.

The Union made a demand to bargain on July 30, 2025. The demand noted that the parties' CBA, Section 18.02(11)(A) provides that "[t]he Parties agree to negotiate preferences regarding the scheduling of doubles" The demand also noted that where an employee is working additional duty on a holiday, such duty should be "covered by Section 18.03." Section 18.03 ("Qualified Substitute/Additional Duty") provides that an employee assigned additional duty can seek a substitute to work in their stead. In determining whether substitutes are qualified, consideration is given to whether they have had an 8-hour rest period since their last shift and whether they have worked more than 64 hours of additional duty during the pay period. CBA, Sections 18.03(2) & (3).

The USCP responded to the proposal on August 13, 2025. The USCP stated that the proposal was not negotiable as it excessively interferes with its management right to assign work by "reversing the Department's decision that sworn employees will no longer be permitted to voluntarily work additional duty or double shifts on holidays and, instead, requiring the Department to permit such work."

The Union requested an allegation of non-negotiability from the USCP, pursuant to OCWR Substantive Regulation 2424.3, which the USCP provided. The Union then filed the negotiability appeal before us.

II. Proposal in Dispute

The Union's demand to bargain included the following paragraph expressing its proposal:

FOP requests to maintain the existing status quo, allowing bargaining unit employees to work additional duty as a qualified substitute on holidays so long as the Department determines they are qualified to do so pursuant to CBA Section 18.03.

The Union explained further that:

To the extent that this issue has not been previously negotiated with FOP and is not covered by the parties' existing collective bargaining agreement, maintaining the status quo and permitting bargaining unit employees to serve as qualified substitutes for additional duty on holidays so long as they meet the requirements identified in CBA Section 18.03 is an appropriate arrangement for bargaining unit employees negatively impacted by management's decision to assign additional duty on holidays.

The Union also noted in its appeal that its proposal could be considered a procedure. Appeal at 4.

III. Analysis and Conclusions

The purpose of negotiability appeals is to resolve questions of whether bargaining proposals are consistent with laws, rules, and regulations. OCWR Substantive Regulation § 2424.1. In this

case, the USCP asserts that the Union's proposal interferes with its management rights to assign work under 5 U.S.C. § 7106(a)(2)(B). We disagree.

The Union's proposal to permit substitute employees to work double shifts on holidays affects the USCP's management right to assign work. That said, section 7106(b)(2) provides that "[n]othing in this section shall preclude any agency and any labor organization from negotiating . . . procedures which management officials of the agency will observe in exercising any authority under this section." Procedures are a mandatory subject of bargaining even where an agency is exercising the right to assign work under section 7106(a)(2)(B). *National Air Traffic Controllers Ass'n Local ZHU and U.S. Dep't of Transportation Federal Aviation Admin. Washington, D.C.*, 65 F.L.R.A. 738, 744 (2011). Proposals governing how management would select employees for assignments have been found to be negotiable procedures, as long as management has reserved the right to determine that the available employees were equally qualified. *U.S. Dep't of Transportation, FAA, and Nat'l Air Traffic Controllers Ass'n, Engineers and Architects, AFL-CIO*, 63 F.L.R.A. 502, 503 (2009); *U.S. Dep't of the Navy, Supervisor of Shipbuilding, Conversion & Repair, Gulf Coast, Pascagoula, Miss. and Nat'l Ass'n of Gov't Empls., Local R5-125*, 62 F.L.R.A. 328, 330 (2007); *American Fed. of Gov't Empls., Council 215 and Social Security Admin., Office of Hearings and Appeals Falls Church, Va.*, 60 F.L.R.A. 461, 467 (2004); *Social Security Admin., Chi. N. Dist. Off. and American Fed. of Gov't Empls., Local 1346*, 56 F.L.R.A. 274, 277 (2000).

The Union appropriately relies on *Portsmouth Federal Employees Metal Trades Council, AFL-CIO and Department of the Navy Portsmouth Naval Shipyard Portsmouth, New Hampshire*, 31 F.L.R.A. 1006, 1006 (1988), where the FLRA found a very similar bargaining proposal to be a procedure and therefore negotiable. In *Portsmouth*, management disputed one sentence in a proposed overtime provision that stated "[t]he Employer further agrees that it will not be its practice to deny an employee the opportunity to [work] 16 hour shifts." 31 F.L.R.A. at 1006 (emphasis omitted). The agency argued that the proposal interfered with management's right to assign work and denied that the proposal was a procedure. *Id.* at 1007. The agency raised concerns about alertness and mental acuity in those employees working double shifts. *Id.* But employees were at times held over to work double shifts, *id.* at 1008, and the FLRA noted the agency's inability to explain the difference in alertness and mental acuity between held-over employees and those scheduled overtime in advance. *Id.* More importantly, the FLRA noted that management's right to assign and direct work by selecting the employees to perform the work was not impacted since overtime would be assigned in accordance with existing procedures, and all of the employees would be similarly qualified. *Id.*

As in *Portsmouth*, the Union's proposal here involves the assignment of work, using existing procedures, to employees who are similarly qualified, as determined by the employing office. As such the proposal is a negotiable procedure that does not impermissibly affect the USCP's management right to assign work.

Here, the USCP raises arguments about what sort of time is at issue in the proposal and points out that holiday time is regularly scheduled duty, not an additional duty. Statement at 6. The USCP argues that the Union is asking that the USCP create additional duty on holidays. Statement at 5-6. We disagree. The USCP defines "additional duty" as "work performed in

addition to an employee's regular scheduled assignment." Statement at 1. The Union states and the USCP does not contest that employees work additional duty on holidays when they are held over. Appeal at 4. The proposal is focused on additional duty assigned on a holiday for which an employee wants a substitute. The proposal does not otherwise allow a substitute for an employee's regularly scheduled assignment on a holiday.

The USCP raises one unique concern in its Statement, that "it [is] more likely that BUEs would exceed limitations placed on their bi-weekly and annual earnings." Statement at 2. However, the USCP does not explain in its Statement or anywhere in the record what those limitations are or how those limitations were not an issue for the several years in which it suspended the Directive and allowed holiday double shifts. Nor does the USCP state how employees assigned holiday duty via a roster, who are held over, would not present the same pay issues in working additional duty.

As noted above, the USCP contends that the proposal interferes with the USCP's right to assign work. Again, we disagree. Despite the proposal's use of the word "status quo," the proposal does not ask the USCP to forgo its management right to assign work or to determine the qualifications of the employees to whom that work is assigned. The proposal is for the USCP to assign holiday work, with additional duty being open to substitutes deemed qualified by the USCP, in accordance with existing procedures. The procedures in Section 18.03 provide that the USCP will determine the qualifications of the employees performing the work when serving as a substitute for additional time served on a holiday. It is worth noting that those procedures are already in use for the 354 non-holidays in an ordinary year. *See* CBA, Section 20.01.

Accordingly, the proposal is a procedure under Section 7106(b)(2) and is therefore negotiable.

In light of our determination that the proposal is negotiable as a procedure, it is not necessary to analyze whether the proposal is an appropriate arrangement. We also need not reach the Union's contentions that the proposal is negotiable because the CBA requires bargaining over double shifts or that the proposal is "covered by" the CBA.¹

ORDER

The USCP shall, upon request, or as otherwise agreed to by the parties, bargain over the Union's proposal.

So ORDERED.

Washington, D.C., March 24, 2026.

¹ Moreover, there is no indication in the record that the Union has filed a grievance, or an unfair labor practice charge, alleging that USCP has failed to apply the procedures of Section 18.03. Rather, the Union simply proposes that USCP use those procedures for assigning additional duty on holidays.