

**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. 26-LM-01 (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 appeal, involving one proposal, was filed by the Fraternal Order of Police, District of Columbia Lodge No. 1, U.S. Capitol Police Labor Committee (FOP) after the United States Capitol Police (USCP) took the position that the proposal was outside the duty to bargain. The appeal 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 (FSLMRS), 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 May 22, 2026, the USCP notified the FOP that it intended to issue a policy directive regarding leave restrictions, Directive 2053.026 (“Leave Restriction Status”) (Directive) and solicited bargaining proposals. USCP Position at 3. In that directive, the USCP sets out a definition of “unscheduled leave”:

Unscheduled Leave. Approved personal leave such as annual, compensatory, sick, or FMLA-related leave that is requested via the time and attendance system *less than twenty-four hours* before the requested leave is to begin or, for division with a leave cap, at a time when no leave slot is available.

Appeal, Exhibit 2 at 3 (emphasis added).

By letter dated June 5, 2026, the FOP put forward a series of proposals, including Proposal C, which provided for changes to the definition of “unscheduled leave.” Appeal, Exhibit 3 at 3.¹ The FOP asserted that the USCP’s proposed “definition of ‘unscheduled leave’ was inconsistent with the definition contained in Article 19 of the Parties’ Collective Bargaining Agreement.” *Id.*

In rejecting Proposal C, the USCP stated that there was no definition of unscheduled leave in the Collective Bargaining Agreement (CBA) and that “the proposal does not constitute a procedure, nor an appropriate arrangement intended to address a specific harm identified by the Union.” Appeal, Exhibit 4 at 6.

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

II. Proposal in Dispute

The FOP’s demand to bargain included Proposal C:

Unscheduled Leave. **For members of the FOP bargaining unit, unscheduled leave is defined in accordance with the Collective Bargaining Agreement; for other employees, unscheduled leave is [a]pproved personal leave such as annual, compensatory, sick, or FMLA related leave that is requested via the time and attendance system less than twenty-four hours before the requested leave is to begin or, for division with a leave cap, at a time when no leave slot is available.**

The FOP clarified in its appeal that it was asserting that the 24-hour timeframe for requesting leave in the Directive was inconsistent with the parties’ “established past practice” under their CBA. Appeal at 2. The FOP stated in the appeal that this purported practice provided that “leave requested by officers more than one hour before a shift has been designated as scheduled leave where overtime slots are available for that shift.” *Id.*

The FOP also noted in its appeal that its proposal could be considered a procedure or an appropriate arrangement. *Id.* 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 Proposal C is not negotiable. The USCP raises minor issues relating to the parties’ CBA and its interpretation and argues that Proposal C excessively interferes with its management right to assign work under 5 U.S.C. § 7106(a)(2)(B). We disagree.

¹ The other proposals are not at issue in this appeal.

A. Proposal C's Meaning Is Clear and Is Not Dependent upon the CBA or the Existence of a Past Practice.

As a preliminary matter, we must address the meaning of Proposal C. Where there is disagreement over the meaning of a proposal, we look to its plain wording and any union statement of intent. *Nat'l Ass'n of Ind. Labor, Local 7 and U.S. Dep't of the Air Force, Seymour Johnson Air Force Base, North Carolina*, 67 F.L.R.A. 654, 655 (2014). The Board will adopt a union's explanation of the meaning of a proposal where it is consistent with the plain wording of the proposal. *United States Capitol Police, & Fraternal Order of Police, District of Columbia Lodge No. 1 U.S. Capitol Police Labor Committee*, Case No. 16-LM-04 (NG) at *4 (Mar. 20, 2017), citing *AFSCME, Local 2830 and U.S. Dep't of Justice*, 60 F.L.R.A. 671 (2005).

The Federal Labor Relations Authority (FLRA) has recognized that unions may revise or amend their proposals during the negotiability appeal process. See *NTEU and U.S. Dep't of the Treasury, I.R.S.*, 72 F.L.R.A. 556, 556-57 (2021); *AFGE, Council of Social Security District Office Locals and Dep't of Health and Human Services, Social Security Admin.*, 11 F.L.R.A. 608, 612-13 (1983) (Member Frazier concurring). Such an amendment or revision is appropriate where the employing office was not prejudiced and was able to brief its position regarding the negotiability of the language in the petition. *NTEU and I.R.S.*, 72 F.L.R.A. at 557, citing *AFGE, Local 3928 and U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services Nat'l Benefits Ctr. Lees Summit, MO*, 66 F.L.R.A. 175, 176 (2011).

What the CBA means and whether there was a past practice are immaterial to whether Proposal C is negotiable. The Board need only determine whether the scheme that Proposal C would enact if adopted by the parties is consistent with law, rule, and regulation and does not need to resolve what are essentially factual questions regarding the meaning or existence of agreements between the parties. See *AFGE, Local 2736 and Dep't of the Air Force, Headquarters 379th Combat Support Group, Wurtsmith Air Force Base, Michigan*, 14 F.L.R.A. 302, 306 n. 6 (1984), on remand from *AFGE, Local 2736 v. FLRA*, 715 F.2d 627 (D.C. Cir. 1983) (the FSLMRS requires the FLRA to resolve negotiability issues but does not require it to resolve factual issues through the negotiability process). The Board's decision herein should not be read to interpret the parties' CBA or to find the existence of a past practice. Nothing requires the Board to recognize the existence of any established practice between the parties in determining the negotiability of the proposal at issue here.

Proposal C calls for unscheduled leave to be "defined in accordance with the Collective Bargaining Agreement." In response to the USCP's assertion that the CBA did not define unscheduled leave, the FOP clarified in its appeal that there has been a practice "under the CBA" whereby leave requested more than an hour before a shift has been treated as scheduled leave if there are overtime slots available for that shift. Appeal at 2. While the USCP continues to argue that the CBA does not define unscheduled leave, the USCP does not dispute that the practice existed, stating instead that its notice to the FOP soliciting proposals resolves any issue of a change in a past practice. USCP Position at 7. The USCP clearly understood Proposal C as the FOP explained it in its appeal. The USCP's Position clearly addressed the FOP's asserted practice.

Accordingly, we will adopt the meaning that the FOP has ascribed to Proposal C. As a result of FOP's clarifications in its appeal, we understand Proposal C to mean:

For members of the FOP bargaining unit, unscheduled leave is defined in accordance with the Collective Bargaining Agreement, i.e., that leave requested more than one hour in advance of a shift is treated as scheduled leave when overtime slots are available; for other employees, unscheduled leave is approved personal leave such as annual, compensatory, sick, or FMLA related leave that is requested via the time and attendance system less than twenty-four hours before the requested leave is to begin or, for division with a leave cap, at a time when no leave slot is available.

B. Proposal C Is Negotiable as a Procedure Under 5 U.S.C. § 7106(b)(2).

The USCP argues that Proposal C excessively interferes with its management right to assign work. USCP Position at 5. The USCP has argued since its original response that Proposal C does not constitute a procedure or appropriate arrangement under 5 U.S.C. § 7106(b)(2) or (3). We agree with the Union that Proposal C constitutes a procedure.

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 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).

Although neither party cited such cases, the FLRA has considered basic procedures for requesting leave in multiple negotiability appeals. *See NTEU and U.S. Dept’s of the Treas. Bureau of Alcohol, Tobacco and Firearms, Washington D.C.*, 43 F.L.R.A. 1442 (1992) *sub. further proceedings* *NTEU v. FLRA*, 30 F.3d 1510 (D.C. Cir 1994); *NFFE, Local 405, and U.S. Dep’t of the Army Information Systems Command St. Louis, Missouri*, 42 F.L.R.A. 1112 (1991); *Service and Hospital Employees International Union Local 150 and Veterans Administration Medical Center Milwaukee, Wisconsin*, 35 F.L.R.A. 521 (1994); *NFFE, Council of Veterans Administration Locals, and Veterans Administration*, 31 F.L.R.A. 360 (1988), *dismissed on remand on other grounds* *NFFE, Council of Veterans Administration Locals, and Veterans Administration*, 33 F.L.R.A. 349 (1988);² *NFFE, Local 1798, and Veterans Administration Medical Center, Martinsburg, West Virginia*, 27 F.L.R.A. 239 (1987); *NFFE, Local 1994, and Military Entrance Processing Station, Boston, Massachusetts*, 27 F.L.R.A. 968 (1987). Where

² *Council of Veterans Admin. Locals* and other cases cited here involving certain employees of the Veterans Administration were remanded and dismissed when the U.S. Court of Appeals for the District of Columbia Circuit found those employees to be outside of the coverage of the FSLMRS due to specific statutory language. *See Colorado Nurses Association v. FLRA*, 851 F.2d 1486 (D.C.Cir.1988). The FLRA continues to cite those cases for their analysis of bargaining proposals. *See Fed. Educ. Ass’n and U.S. Dep’t of Defense Education Activity Alexandria, Virginia*, 73 F.L.R.A. 262, 270 n. 117 (2022).

the FLRA has found leave approval procedures nonnegotiable for excessive interference with management rights, it has ordinarily been because such proposals required the agency to approve leave or to refrain from canceling leave. *NFFE Local 405*, 42 F.L.R.A. at 1124-27 (finding proposals limiting disapproval of annual and sick leave non-negotiable); *AFGE, Local 1858 and U.S. Army Missile Command*, 27 F.L.R.A. 69, 84-86 (1987) (finding non-negotiable a proposal that would limit criteria used in approval of emergency annual leave); *NFFE, Local 1994*, 27 F.L.R.A. at 968-70 (finding proposal limiting disapproval of annual leave to emergencies non-negotiable) *but see Council of Veterans Admin. Locals*, 31 F.L.R.A. at 370-71 (finding proposal limiting canceling leave to criteria defined by the agency negotiable). The FLRA has found negotiable proposals setting forth the basic procedures for requesting annual and sick leave, in particular the timing of requests. *Council of Veterans Admin. Locals*, 31 F.L.R.A. at 370-75. The FLRA has found that a definition of “unauthorized absence” is within the duty to bargain. *Id.* at 387.

Proposal C is a procedure under section 7106(b)(2). While Proposal C is concerned with unscheduled leave, it sufficiently resembles proposals setting forth timeframes for leave requests that were found to be procedures. *Council of Veterans Admin. Locals*, 31 F.L.R.A. at 373 (“It is the responsibility of an employee who is incapacitated for duty to report . . . his or her illness as soon as possible to the supervisor, or designee . . . This must be accomplished as early as practicable on the first day or as soon thereafter as possible”); *NFFE, Local 1798*, 27 F.L.R.A. at 243 (“Annual leave will be scheduled at six month increments . . . Employees' leave requests for annual vacation purposes will be scheduled and approved for each leave period two months prior to the beginning of the next leave period”). As the FOP intended Proposal C to be understood, it is a procedure for requesting leave. It establishes a time limit (one hour in advance of a shift) for requests before such requests are to be treated as unscheduled leave along with further conditions (overtime slots being available). Proposal C does not attempt to negotiate excused absences, and management retains the right to approve or disapprove any leave.³

The USCP argues that defining unscheduled leave is akin to establishing performance standards, part of the management right to assign work. USCP Position at 6, *citing POPA v. FLRA*, 868 F.2d 458 (D.C. Cir. 1988); *AFGE, Local 3748 v. FLRA*, 797 F.2d 612, 615-16 (8th Cir. 1986); *NTEU v. FLRA*, 691 F.2d 553, 563 (D.C. Cir. 1982). The USCP argues that it is important to establish its definition of unscheduled leave to prevent the use of leave from becoming “abusive” or a performance issue. USCP Position at 6. The USCP cites no specific cases to support a finding that the timing of leave requests constitutes a performance standard. Nor does an exhaustive review of the FLRA’s case law on the negotiability of proposals impacting performance standards produce such an example. We therefore conclude that Proposal C does not interfere with the USCP’s right to set performance standards.

Proposal C is negotiable as a procedure.

³ The Directive seems to consider the documentation of leave as important as whether the leave is scheduled. The Directive defines an excused absence as an “unforeseen absence that is supported by valid medical certification or other acceptable documentation” and does not count such absences towards the imposition of leave restrictions. Appeal, Exhibit 2 at 1.

IV. ORDER

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

Issued, at Washington, D.C., October 9, 2026