

DELRS | 2024
Forging the DoD Workforce of the Future

Agency Head Review and Getting Your Agreement Approved
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AGENDA

- Overview of Agency Head Review (AHR)
- AHR Terminology
- Submitting for AHR
- Outcomes of AHR
- Reviewing Contracts
- Ratification
- Negotiability Appeals
- Appeals
- Tips for Approval
- Questions?

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WHY AGENCY HEAD REVIEW?


- 5 U.S.C. 7114(c):
 - 1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.
 - 2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).
 - 3) If the head of the agency does not approve the agreement within the 30-day period*, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

* Beyond 31 days, language becomes unenforceable if in violation of law

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WHEN DOES AGENCY HEAD REVIEW OCCUR?


- Upon execution of a term agreement
- Upon execution of a renegotiated agreement
- Rollover
- Memorandum of Agreement (MOA) / Memorandum of Understanding (MOU)
- Ground rules
- Federal Service Impasses Panel (FSIP) mandated language



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AHR TERMINOLOGY: EXECUTION


- What is the date of *execution*?
 - For the purposes of agency head review, the date of execution is the date on which no further action is necessary to finalize a complete agreement
 - Includes union ratification
 - Includes obtaining all required signatures
- Associated cases:
 - *Fort Bragg Association of Teachers and United States Department of the Army, Fort Bragg, North Carolina, 44 FLRA 857 (1992)*
 - *American Federation of Government Employees, AFL-CIO, Local 1815 and United States Department of the Army, U.S. Army Aviation Center of Excellence, Fort Rucker, Alabama, 69 FLRA No. 47 (2016)*



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AHR TERMINOLOGY: ROLLOVER


- What is a *rollover*?
 - A rollover is another name for an automatic renewal provision. This provides that the contract will remain in effect after its expiration date if no action to renegotiate or terminate is taken within a specified period of time
- Terms of renewal are typically found in the "Duration of Agreement" article
- If your agreement is set to rollover, it should be sent for Agency Head Review during the appropriate window of time
 - Check the provisions of the agreement; 30-day review period begins when no further action is necessary for either party to reopen (i.e., the end of the reopening window)



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CONTRACT LANGUAGE IMPOSED BY FSIP

- Contract language imposed by the Federal Service Impasses Panel (FSIP) is subject to agency head review, unless both parties voluntarily agree to use *Interest Arbitration*
- What happens when the parties use binding arbitration?
 - If the language is considered non-negotiable, then the only avenue for appeal is through the arbitration exception process
- Associated cases:
 - *Patent Office Professional Association and U.S. Department of Commerce, Patent and Trademark Office*, 41 FLRA 795 (1991)



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SUBMITTING FOR AGENCY HEAD REVIEW


- **What to include?**
 - Collective Bargaining Agreement (CBA), including signed and dated signature page
 - Any documents below the government-wide level referenced in the CBA
 - Name, title, rank, and mailing address of the Commander and the Union
 - Must not be a P.O. Box
 - Certificate of Recognition, including letter of authorization from national, if necessary
 - Resubmissions must be re-signed and re-dated
- **When to provide?**
 - Immediately after last signature is received from negotiation teams
- **Where to provide?**
 - Provide to dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil



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THRESHOLD ISSUE

- **Who holds recognition?**
 - If a national union holds recognition, you have no authority to negotiate with a local union without having first obtained some type of written authorization from the national to the local delegating authority/responsibility to the local
 - If delegation of authority occurs, it only applies to the matters specifically delegated



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OUTCOMES OF AGENCY HEAD REVIEW


- Approvals
- Blanket Disapprovals
- Disapprovals



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AHR OUTCOMES: APPROVALS


- Allow parties to implement agreement as originally negotiated
- Requires submission of final approved contract and OPM Form 913B to the Defense Civilian Personnel Advisory Service (DCPAS) and Component Headquarters
- Coordinate with your Component's point-of-contact to upload a Section 508-compliant version of the approved agreement to the Office of Management and Budget's (OMB) MAX.gov website
- Approval may include mandatory understandings that become part of the agreement and agreement history; so, make sure to keep a copy of the AHR approval letter



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AHR OUTCOMES: BLANKET DISAPPROVALS


- Blanket disapprovals are infrequently used
- They do not provide specifics related to the disapproved provisions
- Normally, blanket disapprovals come when specific provisions are found to be non-negotiable
- Still establish the date by which union must file any negotiability appeal
- **Get your CBA in *immediately* so that this does not happen to you!**



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AHR OUTCOMES: DISAPPROVALS


- Disapproval means that the **entire contract is disapproved**, UNLESS:
 - There is a provision in the ground rules or other document outside the basic CBA that states the parties agree the contract will go into effect minus any disapproved provisions; or,
 - The parties execute a subsequent agreement to implement those provisions not specifically disapproved
- What happens when a contract is disapproved?
 - The parties go back and renegotiate the disapproved provisions
 - NOTE: Renegotiated provisions are subject to Agency Head Review just the same as a newly executed agreement
 - The parties agree to exclude the provisions from the contract
 - The union files a negotiability appeal
- Once re-negotiated and re-executed, gets sent back to DCPAS



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HOW DO CONTRACTS GET REVIEWED?


- Look at language 'on its face'
- Read the article as a whole, not always line-by-line or word-for-word
- May need to understand the intent of the language before making a negotiability determination
- Supported by applicable case law



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CONTRACT RATIFICATION


- Some unions have a requirement to ratify the agreement, provided that:
 - Employer has notice of the ratification requirement
 - There is no waiver of the right by the union
 - *Social Security Administration and American Federation of Government Employees, Council 220, 46 FLRA 1404 (1993)*
- Ratification of a collective bargaining agreement **MUST** occur prior to Agency Head Review
 - If ratification is pursued after execution, it may preclude Agency Head Review
 - *Federal Employees Metal Trades Council of Charleston and U.S. Department of the Navy, Charleston Naval Shipyard, Charleston, South Carolina, 35 FLRA 1091 (1990)*



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NEGOTIABILITY APPEALS


- What is a negotiability appeal?
 - A negotiability appeal is a disagreement between an exclusive representative and an agency concerning the legality of a proposal or provision
 - A proposal is any matter offered for bargaining that has not been agreed to by the parties
 - A provision in any matter agreed to by the parties that has been disapproved by the Agency Head
- Who can declare a proposal non-negotiable?
- What is the process for declaring a proposal non-negotiable?

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GOING TO COURT?


- The FLRA's Decision & Order in negotiability appeals may be appealed through the judicial system in accordance with 5 U.S.C. § 7123
- There is a 60-day time limit on filing – NO WAIVERS!!!
- Department of Justice takes over for the agency
- Cannot present arguments that were not included in the original case

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GETTING THE AGREEMENT APPROVED

- Know your management rights
- Get your negotiation team trained
- Talk with other Labor Relations personnel
- Research relevant case law
- Referencing outside documents?
 - Referencing government-wide or above? Do so liberally
 - Referencing below government-wide? Do not reference
 - Ultimately, if you must reference, make sure the references are **current** and you **submit them** with the agreement
- Ask us!

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