

## **§ 2430.8**

the event any persons seeks Authority reconsideration or court review of the Authority decision that forms the basis for the application for fees and expenses.

### **§ 2430.8 Filing and service of documents.**

All pleadings or documents after the time the case is referred by the Authority to an Administrative Law Judge, until the issuance of the Judge's decision, shall be filed in an original and four copies with the Administrative Law Judge and served on all parties to the proceeding. Service of such documents shall be in the same manner as prescribed in §§ 2429.22 and 2429.27.

### **§ 2430.9 Answer to application; reply to answer; comments by other parties; extensions of time to file documents.**

(a) Within 30 days after service of an application, the General Counsel may file an answer to the application. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date thirty (30) days after issuance of any order denying the motion.

(b) If the General Counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate toward a settlement. The filing of such a statement shall extend the time for filing an answer for an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested, and identify the facts relied on in support of the General Counsel's position. If the answer is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(d) Within fifteen (15) days after service of an answer, the applicant may file a reply. If the reply is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(e) Any party to a proceeding other than the applicant and the General Counsel may file comments on an application within 30 days after it is

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served, or on an answer within 15 days after it is served. A commenting party may not participate further in the proceeding on the application unless the Administrative Law Judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

(f) Motions for extensions of time to file documents permitted by this section or § 2430.11 shall be filed with the Administrative Law Judge not less than five (5) days before the due date of the document.

### **§ 2430.10 Settlement.**

The applicant and the General Counsel may agree on a proposed settlement of the award before final action on the application. If an applicant and the General Counsel agree on a proposed settlement of an award before an application has been filed, the proposed settlement shall be filed with the application. All such settlements shall be subject to approval by the Authority.

### **§ 2430.11 Further proceedings.**

(a) The determination of an award may be made on the basis of the documents in the record, or the Administrative Law Judge, upon request of either the applicant or the General Counsel, or on his or her own initiative, may order further proceedings. Such further proceedings may include, but shall not be limited to, an informal conference, oral argument, additional written submissions, or an evidentiary hearing.

(b) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the disputed issues and the evidence sought to be adduced, and shall explain why the additional proceedings are necessary to resolve the issues.

(c) An order of the Administrative Law Judge scheduling oral argument, additional written submissions, or an evidentiary hearing, shall specify the issues to be considered in such argument, submission, or hearing.

(d) Any evidentiary hearing held pursuant to this section shall be conducted not earlier than forty-five (45) days after the date on which the application is served. In all other respects,

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such hearing shall be conducted in accordance with §§ 2423.14, 2423.16, 2423.17, 2423.19 through 2423.21, 2423.23, and 2423.24, insofar as these sections are consistent with the provisions of this part.

### **§ 2430.12 Administrative Law Judge's decision; contents; service; transfer of case to the Authority; contents of record in case.**

(a) Upon conclusion of proceedings under §§ 2430.6 to 2430.11, the Administrative Law Judge shall prepare a decision. The decision shall include written findings and conclusions on the applicant's status as a prevailing party and eligibility, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Authority, including the judge's decision and the record. Service of the Administrative Law Judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The record in a proceeding on an application for an award of fees and expenses shall consist of the application for an award of fees and expenses and any amendments or attachments there-

to, the net worth exhibit, the answer and any amendments or attachments thereto, any reply to the answer, any comments by other parties, motions, rulings, orders, stipulations, written submissions, the stenographic transcript of oral argument, the stenographic transcript of the hearing, exhibits and depositions, together with the Administrative Law Judge's decision, and the exceptions and briefs as provided in § 2430.13, and the record of the unfair labor practice proceeding upon which the application is based.

### **§ 2430.13 Exceptions to Administrative Law Judge's decision; briefs; action of Authority.**

Procedures before the Authority, including the filing of exceptions to the administrative law judge's decision rendered pursuant to § 2430.12, and action by the Authority, shall be in accordance with §§ 2423.26(c), 2423.27, and 2423.28 of these rules. The Authority's review of the matter shall be in accordance with § 2423.29(a).

### **§ 2430.14 Payment of award.**

To obtain payment of an award made by the Authority the applicant shall submit to the Executive Director of the Authority a copy of the Authority's final decision granting the award, accompanied by a statement that the applicant will not seek court review of the decision. The amount awarded will then be paid unless judicial review of the award, or of the underlying decision, has been sought by the applicant or any other party to the proceeding.

## SUBCHAPTER D—FEDERAL SERVICE IMPASSES PANEL

### PART 2470—GENERAL

#### Subpart A—Purpose

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2470.1 Purpose.

#### Subpart B—Definitions

2470.2 Definitions.

AUTHORITY: 3 U.S.C. 431; 5 U.S.C. 7119, 7134.

#### Subpart A—Purpose

##### § 2470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of section 7119 of title 5 and, where applicable, section 431 of title 3 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve the disputes. It is the policy of the Panel to encourage labor and management to resolve disputes on terms that are mutually agreeable at any stage of the Panel's procedures.

[63 FR 46159, Aug. 31, 1998]

#### Subpart B—Definitions

##### § 2470.2 Definitions.

(a) The terms *agency*, *labor organization*, and *conditions of employment* as used in this subchapter shall have the meaning set forth in 5 U.S.C. 7103(a). When used in connection with 3 U.S.C. 431, the term *agency* as used in the Panel's regulations in this subchapter means an employing office as defined in 3 U.S.C. 401(a)(4).

(b) The term *Executive Director* means the Executive Director of the Panel.

(c) The terms *designated representative* or *designee* of the Panel means a Panel member, a staff member, or other individual designated by the Panel to act on its behalf.

(d) The term *hearing* means a fact-finding hearing, arbitration hearing, or any other hearing procedure deemed necessary to accomplish the purposes of 5 U.S.C. 7119.

(e) The term *impasse* means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement.

(f) The term *Panel* means the Federal Service Impasses Panel described in 5 U.S.C. 7119(c) or a quorum thereof.

(g) The term *party* means the agency or the labor organization participating in the negotiation of conditions of employment.

(h) The term *quorum* means a majority of the members of the Panel.

(i) The term *voluntary arrangements* means any method adopted by the parties for the purpose of assisting them in their resolution of a negotiation dispute which is not inconsistent with the provisions of 5 U.S.C. 7119.

[45 FR 3520, Jan. 17, 1980, as amended at 48 FR 19693, May 2, 1983; 63 FR 46159, Aug. 31, 1998]

### PART 2471—PROCEDURES OF THE PANEL

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AUTHORITY: 5 U.S.C. 7119, 7134.

SOURCE: 45 FR 3520, Jan. 17, 1980, unless otherwise noted.

**§ 2471.1 Request for Panel consideration; request for Panel approval of binding arbitration.**

If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse:

(a) Either party, or the parties jointly, may request the Panel to consider the matter by filing a request as hereinafter provided; or the Panel may, pursuant to 5 U.S.C. 7119(c)(1), undertake consideration of the matter upon request of (i) the Federal Mediation and Conciliation Service, or (ii) the Executive Director; or

(b) The parties may jointly request the Panel to approve any procedure, which they have agreed to adopt, for binding arbitration of the negotiation impasse by filing a request as herein-after provided.

**§ 2471.2 Request form.**

A form is available for parties to use in filing either a request for consideration of an impasse or an approval of a binding arbitration procedure. Copies are available on the FLRA's website at [www.flra.gov](http://www.flra.gov) or, with advance permission only, from the Office of the Executive Director, Federal Service Impasses Panel, Suite 300, 1400 K Street NW, Washington, DC 20424-0001. Telephone (771) 444-5762. Use of the form is not required, provided that the request includes all of the information set forth in § 2471.3.

[89 FR 20843, Mar. 26, 2024]

**§ 2471.3 Content of request.**

(a) A request from a party or parties to the Panel for consideration of an impasse must be in writing and include the following information:

(1) Identification of the parties and individuals authorized to act on their behalf, including their addresses, telephone numbers, and facsimile numbers;

(2) Statement of issues at impasse and the summary positions of the initiating party or parties with respect to those issues; and

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized.

(b) A request for approval of a binding arbitration procedure must be in writing, jointly filed by the parties, and include the following information about the pending impasse:

(1) Identification of the parties and individuals authorized to act on their behalf, including their addresses, telephone numbers, and facsimile numbers;

(2) Brief description of the impasse including the issues to be submitted to the arbitrator;

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized;

(4) Statement as to whether any of the proposals to be submitted to the arbitrator contain questions concerning the duty to bargain and a statement of each party's position concerning such questions; and

(5) Statement of the arbitration procedures to be used, including the type of arbitration, the method of selecting the arbitrator, and the arrangement for paying for the proceedings or, in the alternative, those provisions of the parties' labor agreement which contain this information.

[45 FR 3520, Jan. 17, 1980, as amended at 61 FR 41294, Aug. 8, 1996]

**§ 2471.4 Where to file.**

Requests to the Panel provided for in this part must either be filed electronically through use of the eFiling system on the FLRA's website at [www.flra.gov](http://www.flra.gov), or be addressed to the Executive Director, Federal Service Impasses Panel, Suite 300, 1400 K Street NW, Washington, DC 20424-0001. All inquiries or correspondence on the status of impasses or other related matters must be submitted by regular mail to the street address above, by using the telephone number (771) 444-5762, or by using the facsimile number (202) 482-6674.

[89 FR 11702, Feb. 15, 2024]

**§ 2471.5 Filing and service.**

(a) *Filing and service of request.* (1) Any party submitting a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel, unless the request is filed electronically as

discussed below. A clean copy may be submitted for the original. Requests may be submitted electronically through use of the eFiling system on the FLRA's website at *www.flra.gov*, or by registered mail, certified mail, regular mail, or commercial delivery. Requests also may be accepted by the Panel if transmitted to the facsimile machine of its office, the number of which is (202) 482-6674. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. While requests may also be submitted by in-person delivery to the FSIP, you must first obtain permission, by calling (771) 444-5762, and then schedule an appointment at least one business day in advance of submission. In-person delivery is accepted with permission, and by appointment only, Monday through Friday (except Federal holidays).

(2) The party submitting the request shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any mediation service which may have been utilized. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a request may be made in person or by registered mail, certified mail, regular mail, or commercial delivery. With the permission of the person receiving the request, service may be made by electronic or facsimile transmission, or by any other agreed-upon method. When the Panel acts on a request from the Federal Mediation and Conciliation Service or acts on a request from the Executive Director under § 2471.1(a), it will notify the parties to the dispute, their counsel of record, if any, and any mediation service which may have been utilized.

(b) *Filing and service of other documents.* (1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel, with the exception of responses or documents filed si-

multaneously with the electronic filing of a request through use of the FLRA's eFiling system. Responses or documents may be submitted electronically through use of the eFiling system on the FLRA's website at *www.flra.gov*, or by registered mail, certified mail, regular mail, or commercial delivery. Responses or documents also may be accepted by the Panel if transmitted to the facsimile machine of its office, the number of which is (202) 482-6674. A party submitting a response or document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper. While responses or documents may also be submitted by in-person delivery to the FSIP, you must first obtain permission, by calling (771) 444-5762, and then schedule an appointment at least one business day in advance of submission. In-person delivery is accepted with permission, and by appointment only, Monday through Friday (except Federal holidays).

(2) The party submitting the document shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a document may be made in person or by registered mail, certified mail, regular mail, or commercial delivery. With the permission of the person receiving the document, service may be made by electronic or facsimile transmission, or by any other agreed-upon method.

(c) A signed and dated statement of service shall accompany each document submitted to the Panel, unless the document is a request under § 2471.5(a) that is filed electronically through use of the FLRA's eFiling system. For requests under § 2471.5(a) that are filed electronically through use of the FLRA's eFiling system, the filing party shall certify, in the FLRA's eFiling system and at the time of filing, that copies of the request and any supporting documents have been served as required. The statement of service, however filed, shall include the names of the parties and persons served, their

addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served, if properly addressed, is deposited in the U.S. mail, deposited with a commercial-delivery service that will provide a record showing the date the document was tendered to the delivery service, or delivered in person after permission to do so is granted. Where service is made by electronic or facsimile transmission, the date of service shall be the date of transmission.

(e) Unless otherwise provided by the Panel or its designated representatives, any document or paper filed with the Panel under this section, together with any enclosure filed therewith, shall be typewritten on 8½ × 11 inch plain white paper, shall have margins no less than 1 inch on each side, shall be in typeface no smaller than 10 characters per inch, and shall be numbered consecutively. Nonconforming papers may, at the Panel's discretion, be rejected.

[48 FR 19694, May 2, 1983, as amended at 61 FR 41294, Aug. 8, 1996; 77 FR 5988, Feb. 7, 2012; 89 FR 20844, Mar. 26, 2024]

**§ 2471.6 Investigation of request; Panel procedures; approval of binding arbitration.**

(a) Upon receipt of a request for consideration of an impasse, the Panel or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Panel shall either:

(1) Decline to assert jurisdiction in the event that it finds that no impasse exists or that there is other good cause for not asserting jurisdiction, in whole or in part, and so advise the parties in writing, stating its reasons; or

(2) Assert jurisdiction and

(i) Recommend to the parties procedures for the resolution of the impasse; and/or

(ii) Assist the parties in resolving the impasse through whatever methods and procedures the Panel considers appropriate. The procedures utilized by the Panel may include, but are not limited to: informal conferences with a Panel designee; factfinding (by a Panel designee or a private factfinder); written

submissions; show cause orders; oral presentations to the Panel; and arbitration or mediation-arbitration (by a Panel designee or a private arbitrator). Following procedures used by the Panel, it may issue a report to the parties containing recommendations for settlement prior to taking final action to resolve the impasse.

(b) Upon receipt of a request for approval of a binding arbitration procedure, the Panel or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Panel shall promptly approve or disapprove the request, normally within five (5) workdays.

[45 FR 3520, Jan. 17, 1980, as amended at 61 FR 41294, Aug. 8, 1996]

**§ 2471.7 Preliminary factfinding procedures.**

When the Panel determines that a factfinding hearing is necessary under § 2471.6, and it appoints one or more of its designees to conduct such hearing, it will issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state:

(a) The names of the parties to the dispute;

(b) The date, time, place, type, and purpose of the hearing;

(c) The date, time, place, and purpose of the prehearing conference, if any;

(d) The name of the designated representatives appointed by the Panel;

(e) The issues to be resolved; and

(f) The method, if any, by which the hearing shall be recorded.

[45 FR 3520, Jan. 17, 1980, as amended at 48 FR 19694, May 2, 1983; 61 FR 41295, Aug. 8, 1996]

**§ 2471.8 Conduct of factfinding and other hearings; prehearing conferences.**

(a) A designated representative of the Panel, when so appointed to conduct a hearing, shall have the authority on behalf of the Panel to:

(1) Administer oaths, take the testimony or deposition of any person under oath, receive other evidence, and issue subpoenas;