

## § 2471.12

### § 2471.12 Inconsistent labor agreement provisions.

Any provisions of the parties' labor agreements relating to impasse resolution which are inconsistent with the provisions of either 5 U.S.C. 7119 or the procedures of the Panel shall be deemed to be superseded, unless such provisions are permitted under 5 U.S.C. 7135.

## PART 2472—IMPASSES ARISING PURSUANT TO AGENCY DETERMINATIONS NOT TO ESTABLISH OR TO TERMINATE FLEXIBLE OR COMPRESSED WORK SCHEDULES

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AUTHORITY: 5 U.S.C. 6131.

SOURCE: 48 FR 19695, May 2, 1983, unless otherwise noted.

### Subpart A—Purpose and Definitions

#### § 2472.1 Purpose.

The regulations contained in this Part are intended to implement the provisions of section 6131 of title 5 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiations impasses arising from agency determinations not to establish or to terminate flexible and compressed work schedules.

#### § 2472.2 Definitions.

(a) The term *the Act* means the Federal Employees Flexible and Com-

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pressed Work Schedules Act of 1982, Pub. L. 97–221, 5 U.S.C. 6120 *et seq.*

(b) The term *adverse agency impact* shall have the meaning set forth in 5 U.S.C. 6131(b).

(c) The term *agency* shall have the meaning set forth in 5 U.S.C. 6121(1).

(d) The term *duly authorized delegatee* means an official who has been delegated the authority to act for the head of the agency in the matter concerned.

(e) The term *agency determination* means a determination: (1) Not to establish a flexible or compressed work schedule under 5 U.S.C. 6131(c)(2); or (2) to terminate such a schedule under 5 U.S.C. 6131(c)(3).

(f) The terms *collective bargaining agreement* and *exclusive representative* shall have the meanings set forth in 5 U.S.C. 6121(8).

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

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

(i) The term *flexible and compressed work schedules* shall have the meaning set forth in 5 U.S.C. 6121 *et seq.*

(j) The term *hearing* means a fact-finding hearing or any other hearing procedures deemed necessary to accomplish the purpose of 5 U.S.C. 6131.

(k) The term *impasse* means that point in the negotiation of flexible and compressed work schedules at which the parties are unable to reach agreement on whether a schedule has had or would have an adverse agency impact.

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

(m) The term *party* means the agency or the exclusive representative participating in negotiations concerning flexible and compressed work schedules.

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

(o) The term *schedule(s)* means flexible and compressed work schedules.

[48 FR 19695, May 2, 1983, as amended at 61 FR 41295, Aug. 8, 1996]

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### Subpart B—Procedures of the Panel

#### § 2472.3 Request for Panel consideration.

Either party, or the parties jointly, may request the Panel to resolve an impasse resulting from an agency determination not to establish or to terminate a flexible or compressed work schedule by filing a request as herein-after provided. A form is available for use by the parties in filing a request with the Panel. Copies are available on the FLRA's Web site at *www.flra.gov*, or from the Office of the Executive Director, Federal Service Impasses Panel, Suite 200, 1400 K Street NW., Washington, DC 20424-0001. Telephone (202) 218-7790. Fax (202) 482-6674. Use of the form is not required provided that the request includes all of the information set forth in § 2472.4.

[77 FR 5989, Feb. 7, 2012]

#### § 2472.4 Content of request.

(a) A request from a party or parties to the Panel for consideration of an impasse arising from an agency determination not to establish or to terminate a flexible or compressed work schedule under section 6131 (c)(2) or (c)(3) of the Act must be in writing and shall 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) Description of the bargaining unit involved in the dispute and the date recognition was accorded to the exclusive representative;

(3) Number, length, and dates of negotiation sessions held;

(4) A copy of any collective bargaining agreement between the parties and any other agreements concerning flexible and compressed work schedules;

(5) A copy of the schedule or proposed schedule, if any, which is the subject of the agency's determination;

(6) A copy of the agency's written determination and the finding on which the determination is based, including, in a case where the finding is made by a duly authorized delegatee, evidence

of a specific delegation of authority to make such a finding; and

(7) A summary of the position of the initiating party or parties with respect to the agency's determination.

[48 FR 19695, May 2, 1983, as amended at 61 FR 41295, Aug. 8, 1996]

#### § 2472.5 Where to file.

Requests to the Panel provided for in this part must either be filed electronically through use of the FLRA's eFiling system on the FLRA's Web site at *www.flra.gov*, or be addressed to the Executive Director, Federal Service Impasses Panel, Suite 200, 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 (202) 218-7790, or by using the facsimile number (202) 482-6674.

[77 FR 5989, Feb. 7, 2012]

#### § 2472.6 Filing and service.

(a) *Filing and service of request.* (1) Any party submitting a request for Panel consideration of an impasse filed pursuant to § 2472.3 of these rules shall file an original and one copy with the Panel unless the request is filed electronically through use of the FLRA's eFiling system. A clean copy may be submitted for the original. Requests may be submitted in person, electronically, or by registered mail, certified mail, regular mail, or commercial delivery. Requests will also be accepted by the Panel if transmitted to the facsimile machine of its office. 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.

(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, and 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 request may be made in person or by registered mail, certified mail, regular

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mail, or commercial delivery. With the permission of the person receiving the request, service may be made by facsimile or electronic transmission, or by any other agreed-upon method.

(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 filed pursuant to § 2472.3 shall file an original and one copy with the Panel, with the exception of documents that are filed simultaneously with the electronic filing of a request for Panel consideration. A clean copy may be submitted for the original. Documents may be submitted to the Panel in person or by registered mail, certified mail, regular mail, commercial delivery, or, in the case of documents submitted simultaneously with the electronic filing of a request for Panel consideration, may be uploaded electronically through use of the FLRA's eFiling system at [www.flra.gov](http://www.flra.gov). Documents may also be accepted by the Panel if transmitted electronically or to the facsimile machine of its office, but only with advance permission, which may be obtained by telephone. A party submitting a 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 submission, if otherwise proper.

(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 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 § 2472.3 that is filed electronically. For requests under § 2472.3 that are filed electronically, 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

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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, is delivered in person, or is deposited with a commercial-delivery service that will provide a record showing the date the document was tendered to the delivery service. 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 part, 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.

(f) An impasse arising pursuant to section 6131(c) (2) or (3) of the Act will not be considered to be filed, and no Panel action will be taken, until the party initiating the request has complied with § 2472.4, 2472.5, and 2472.6 of these regulations.

[48 FR 19695, May 2, 1983. Redesignated and amended at 61 FR 41295, Aug. 8, 1996; 77 FR 5989, Feb. 7, 2012]

### § 2472.7 Investigation of request; Panel assistance.

(a) Upon receipt of a request for consideration of an impasse filed in accordance with these rules, the Panel or its designee shall promptly conduct an investigation, consulting when necessary with the parties. After due consideration, the Panel shall determine the procedures by which the impasse shall be resolved and shall notify the parties of its determination.

(b) The procedures utilized by the Panel shall afford the parties an opportunity to present their positions, including supporting evidence and arguments orally and/or in writing. They

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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; and oral presentations to the Panel.

[48 FR 19695, May 2, 1983. Redesignated and amended at 61 FR 41295, 41296, Aug. 8, 1996]

### § 2472.8 Preliminary hearing procedures.

When the Panel determines that a hearing shall be held, and it appoints one or more of its designees to conduct such a 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 representative(s) appointed by the Panel;
- (e) The issue(s) to be resolved; and
- (f) The method, if any, by which the hearing shall be transcribed.

[61 FR 41296, Aug. 8, 1996]

### § 2472.9 Conduct of hearing and prehearing conference.

(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;
- (2) Conduct the hearing in open or in closed session at the discretion of the designated representative for good cause shown;
- (3) Rule on motions and requests for appearance of witnesses and the production of records;
- (4) Designate the date on which posthearing briefs, if any, shall be submitted; and
- (5) Determine all procedural matters concerning the hearing, including the length of sessions, conduct of persons in attendance, recesses, continuances, and adjournments; and take any other action which, in the judgment of the designated representative, will pro-

mote the purpose and objectives of the hearing.

(b) A prehearing conference may be conducted by the designated representative of the Panel to:

- (1) Inform the parties of the purpose of the hearing and the procedures under which it will take place;
- (2) Explore the possibilities of obtaining stipulations of fact;
- (3) Clarify the positions of the parties with respect to the issues to be heard; and
- (4) Discuss any other relevant matters which will assist the parties in the resolution of the dispute.

[48 FR 19695, May 2, 1983. Redesignated at 61 FR 41295, Aug. 8, 1996]

### § 2472.10 Reports.

When a report is issued after a hearing conducted pursuant to § 2472.8 and 2472.9, it normally shall be in writing and shall be submitted to the Panel, with a copy to each party, within a period normally not to exceed 30 calendar days after the close of the hearing and receipt of briefs, if any.

[61 FR 41296, Aug. 8, 1996]

### § 2472.11 Final action by the Panel.

(a) After due consideration of the parties' positions, evidence, and arguments, including any report submitted in accordance with § 2472.10, the Panel shall take final action in favor of the agency's determination if:

- (1) The finding on which a determination under 5 U.S.C. 6131(c)(2) not to establish a flexible or compressed work schedule is based is supported by evidence that the schedule is likely to cause an adverse agency impact; or
- (2) The finding on which a determination under 5 U.S.C. 6131(c)(3) to terminate a flexible or compressed work schedule is based is supported by evidence that the schedule has caused an adverse agency impact.

(b) If the finding on which an agency determination under 5 U.S.C. 6131(c)(2) or (c)(3) is based is not supported by evidence that the schedule is likely to cause or has caused an adverse agency impact, the Panel shall take whatever final action is appropriate.

(c) In preparation for taking such final action, the Panel may hold hearings, administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas, or it may appoint one or more individuals to exercise such authority on its behalf. Such action may be taken without regard to procedures previously authorized by the Panel.

(d) Notice of any final action of the Panel shall be promptly served upon the parties.

[48 FR 19695, May 2, 1983. Redesignated and amended at 61 FR 41295, 41296, Aug. 8, 1996]

## PART 2473—SUBPOENAS

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

### § 2473.1 Subpenas.

(a) Any member of the Panel, the Executive Director, or other person designated by the Panel, may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no such subpoena need be sought.

(c) A request for a subpoena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Executive Director, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under consideration and the request describes with sufficient particularity the documents sought. Service of an approved subpoena is the responsibility of the party on

whose behalf the subpoena was issued. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

(e) Any person served with a subpoena who does not intend to comply shall within five (5) days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the party on whose behalf the subpoena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Executive Director. A petition to revoke a subpoena filed during the hearing, and a written statement of service shall be filed with the appropriate presiding official(s). The Executive Director, or the appropriate presiding official(s) will, as a matter of course, cause a copy of the petition to revoke to be served on the party on whose behalf the subpoena was issued, but shall not be deemed to assume responsibility for such service. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall revoke the subpoena if the evidence the production of which is required does not relate to any matter under consideration in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall make a simple statement of procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpoena issued, and upon the request of the party on whose behalf the subpoena was issued, the Solicitor of the FLRA shall, on behalf of such party, institute proceedings in the appropriate district court for the enforcement thereof, unless to do so would be inconsistent with law and the policies of the Federal Service Labor-Management Relations Statute. The