



**National Weather Service
Employees Organization**

July 13, 2020

David Murray
Senior Advisor
NWS Management Representative for National Labor Issues
Office of the Assistant Administrator
National Weather Service
1325 East West Highway
Silver Spring, MD 20815

Dear David:

This responds to your email of July 13 in which you write that “the Statute and caselaw make clear that a Union may not condition acceptance of Panel-imposed CBA terms to a ratification vote of its members.” However, you have not cited any such case law because there simply isn’t any that supports that proposition. Further, your email ignores that fact that there were thirteen other articles to which the parties agreed without Panel assistance.

“[T]he right of employees to ratify labor agreements implicitly and logically flows from section 7102 of the Statute where employees have the right ‘to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.’ *Social Security Admin.*, 46 FLRA 1401, 1415 (1993) (ALJ opinion). The Authority has recognized the union’s right to renegotiate an agreement following a failed ratification vote is without limitation. *Dep’t. of the Air Force, Griffiss Air Force Base*, 25 FLRA 579, 592 (1987). Moreover, the Authority has indeed recognized that a union’s membership has a right to ratify a contract following an FSIP decision. In *Am. Fed. of Gov’t. Emps. Local 1815*, 69 FLRA 309 (2015), the Authority adopted an ALJ’s decision which found that a union had violated its duty to bargain in good faith by failing to execute a new CBA following a FSIP decision that resolved a final provision in dispute. The union defended its failure to execute the agreement because it failed a ratification vote. The ALJ ruled that the union’s ratification vote was ineffective solely because it failed to give the agency notice of its intent to ratify the agreement before negotiations had concluded, which is a prerequisite to ratification under longstanding Authority precedent. The ALJ wrote, however, that had the union provided notice of its intent to ratify the CBA earlier, the agency would have been obligated to renegotiate the agreement even though it contained an FSIP imposed provision:

The key issue in this case is when, if ever, did the parties reach agreement on all terms and conditions of the new CBA. If the GC and Agency are correct, and the parties reached agreement by April 23 on all terms of the CBA but one, and the final term was imposed on them by the Panel on May 9, then the Union could not subject the agreement to ratification, because the Union failed to notify the Agency about ratification before the close of negotiations. *Conversely, if the Union is correct, and the parties had not reached a binding agreement on all terms when the Panel decision was issued on May 9, the Union's May 14 notification of an imminent ratification vote was timely, and the membership's June 19 vote against ratification obligated the Agency to renew negotiations.*

69 FLRA at 316 (emphasis added).

The Authority has also held that a union had a right to ratify a contract imposed by an interest arbitrator acting under the Panel's direction notwithstanding the Panel's authority to take whatever action is necessary to resolve an impasse:

There is nothing in the Statute which prohibits the parties from including a provision for Union ratification of an agreement before it becomes final and the Authority has held that ratification of a tentative agreement by a union's membership may be a precondition to a binding agreement. See U.S. Department of Commerce, Bureau of the Census and American Federation of Government Employees, Local 2782, AFL-CIO, 17 FLRA 667 (1985). In this case, the parties' ground rules provide for ratification by the Union locals and the Arbitrator's award is consistent with that agreement. Consequently, we find that the provision allowing the reopening of the agreement in the event the Union fails to ratify the agreement is not contrary to section 7119(c)(5)(B).

Social Security Admin., 25 FLRA 238, 241 (1987).

Similarly, in finding that a Panel imposed agreement was nonetheless subject to agency head review under § 7114, the D.C. Circuit wrote that “[i]t is clear from the structure of the statute that the term ‘binding’ [in § 7119] is not absolute.” *Am. Fed. of Gov’t. Emps. v. FLRA*, 778 F.2d 850, 856 (D.C. Cir. 1985). The court noted that the Panel is authorized to “take whatever action is necessary and *not inconsistent with this* chapter to resolve the impasse,” (*id.* at n. 10, emphasis in original). Therefore, the Panel’s authority to issue a binding decision is subject to other rights in the Statute (such as the right to ratify an agreement as well as agency head review) which must be accommodated.

The right to ratify the entire agreement, including Panel imposed provisions, is in keeping with the understanding that “an agreement generally will be treated as an integrated and complete document rather than as a collection of articles and sections. . . . To hold

otherwise would produce chaotic results.” *Patent Office Professional Assn.*, 41 FLRA 795, 802 (1991).

The FSIP itself has recognized that there is no Authority case law excusing an agency from renegotiating the entire agreement (including provisions imposed by the Panel), following a failed ratification vote. In *Dep’t of Defense Education Activity and Federal Education Assn.*, 19 FSIP 001 (2019), the Panel was asked to resolve an impasse over ground rules that included an agency proposal that included the sentence: “Provisions included in the agreement by Order of the FSIP are not subject to ratification by Association members.” The Panel rejected this proposal. Although the Panel noted there was an Administrative Law Judge decision that found that FSIP imposed provisions were not subject to ratification, the Panel wrote that “its precedential value is questionable” because the ALJ decision was not adopted by the Authority.¹ 19 FSIP 001, slip op. at 26. In *U.S. Patent and Trademark Office and Patent Office Professional Assn.*, 20 FSIP 045 (2020), the FSIP recently rejected a proposal that would permit the union to ratify only those portions of the agreement to which the parties had agreed before Panel action, because it would be waiver of the union’s statutory right to ratify. The Panel wrote:

The FLRA precedent concerning ratification of the CBA is clear that ratification is a statutory right of the Union. Any waiver of that statutory right is a permissive subject. The Agency’s proposals call for partial ratification or a potential waiver of it altogether. The Union has elected not to waive that right, and the Agency did not provide persuasive case law – as required by *Carswell* – to establish that its proposals are appropriate subjects of negotiation.

Slip op. at 4.

Further, the FSLMR Statute states that Panel decisions “shall be binding on such parties during the term of the agreement, *unless the parties agree otherwise.*” 5 U.S.C. § 7119(c) (emphasis added). Even if NWSEO does not have the inherent statutory right to ratify the entirety of the agreement, the parties “agree[d] otherwise” in section 19 of their ground rules.

In your email you write that “Rule 19 has no application to the provisions imposed by the Panel” and you ask whether “the Union intends to submit the 4 Articles that were negotiated by the parties (and were not part of the Panel’s final and binding order) to a ratification vote.” We do indeed intend to submit those articles to our membership for a ratification vote, along with the remainder of the agreement. We further disagree with the agency’s interpretation of ground rule 19 and, accordingly, hereby notify the NWS that we are submitting the disagreement over the interpretation and application of ground rule 19,

¹ Any ALJ decisions to the contrary are non-precedential. 5 C.F.R. § 2423.41(a).

along with the agency's failure to provide us with a complete copy of the final agreement and engage in an editorial review as required by ground rule 18 and 19, to an arbitrator for resolution pursuant to ground rule 23. We hope that because of the critical nature of this dispute the agency will participate in the selection of the arbitrator and a hearing in this matter on an expedited basis. Richard Hirn will represent NWSEO in that matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John V. Werner". The signature is fluid and cursive, with a large, sweeping initial "J".

John V. Werner

National President