



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

DEPARTMENT OF THE AIR FORCE
EGLIN AIR FORCE BASE, FLORIDA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1897, AFL-CIO

CHARGING PARTY

Case No. AT-CA-15-0819

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard by the undersigned Chief Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JULY 5, 2016**. Exceptions may be filed electronically at www.flra.gov, by selecting eFile under the **Filing a Case** tab and follow the instructions, or by U.S. Mail addressed to:

Office of Case Intake & Publication
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001

A handwritten signature in black ink, appearing to read "Charles R. Center", written over a horizontal line.

CHARLES R. CENTER
Chief Administrative Law Judge

Dated: May 31, 2016
Washington, D.C.



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OALJ 16-28

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Case No. AT-CA-15-0819

Mark D. Halverson
For the General Counsel

Leah E. Watson
For the Respondent

Thaddeus Wallace
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (Statute), and the Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), 5 C.F.R. part 2423.

On September 10, 2015, the American Federation of Government Employees, Local 1897, AFL-CIO (Local 1897/Union) filed an unfair labor practice (ULP) charge against the Department of the Air Force, Eglin Air Force Base, Florida (Respondent/Agency). GC Ex. 1(a). After conducting an investigation, on October 28, 2015, the Regional Director of the Denver Region issued a Complaint and Notice of Hearing alleging that the Respondent

violated § 7116(a)(1) and (5) of the Statute by failing and refusing to bargain with the Union over certain matters concerning official time.¹ GC Ex. 1(b). In its Answer to the Complaint, the Respondent admitted some factual allegations, but denied that it committed the alleged ULP. GC Ex. 1(c).

A hearing in the matter was conducted on February 9, 2016, in Crestview, Florida. At the hearing, all parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel and Respondent filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, the undersigned has determined that the Respondent violated the Statute by refusing to bargain with the Union.

In support of this determination, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. The American Federation of Government Employees, AFL-CIO (AFGE), is a labor organization within the meaning of § 7103(a)(4) of the Statute, and is the exclusive representative of a bargaining unit of employees appropriate for collective bargaining at the Respondent. GC Exs. 1(b) & 1(c). Local 1897 is an agent of AFGE for the purpose of representing a recognized group of non-professional bargaining unit employees at Eglin AFB. The Union and Respondent operate under a collective bargaining agreement, referred to as the Master Labor Agreement (MLA), between the Air Force Materiel Command (AFMC) and AFGE Council No. 214 (Council 214), which covers several recognized bargaining units at various Air Force facilities nationwide. The MLA came into effect in 2012. Jt. Ex. 3 at 118.

Local 1897 represents approximately 2,700 non-professionals at Eglin Air Force Base (AFB). Tr. 16. Under Article 4, Section 4.13(a) of the MLA, Local 1897 is allotted two representatives on 100 percent official time. Jt. Ex. 3 at 12. A second recognized bargaining union at Eglin AFB, consisting of approximately 1,000 professionals employed at Eglin AFB is represented by Local 1942. Local 1942 is also covered by Council 214's MLA and pursuant to Article 4, Section 4.13(a), Local 1942 is allotted one representative on 100 percent official time. Tr. 16; Jt. Ex. 3 at 12.

¹ The Complaint does not specifically allege that the Union submitted a modified proposal on August 27, 2015, and that the Respondent refused to bargain over that proposal as well. I find that the Complaint nevertheless encompasses the subsequent request and refusal (there is no claim to the contrary), and that in any event, the matter was fully litigated at the hearing. See GC Br. at 6; R. Br. at 3; Jt. Ex. 7.

This case traces its origins to term negotiations conducted in 2001, when AFMC and Council 214 bargained over official time allotments. At the beginning of negotiations, Council 214's representatives expressed an interest in having "more full time representatives at all of its locations," while management "expressed some reservations[]" about the idea. Jt. Ex. 10, MLA Renegotiation Minutes, August 27, 2001, at 5. The parties discussed this topic again on September 20, 2001. According to the minutes, "[l]anguage was crafted which provided for additional bargaining for blocks of representational time [(also referred to as "preapproved" official time)] beyond [what] the full-timers" had already been allocated. Jt. Ex. 10, MLA Renegotiation Minutes, September 20, 2001, at 3. One management representative expressed an interest in avoiding "interminable negotiations." *Id.* After a caucus, management suggested adding representatives to replace "full-timers" during absences. *Id.* The Union's chief spokesperson then stated that there were "major problems[]" at Eglin and other bases, and that "proposed language on negotiating additional blocks of time was an incentive for those folks to start partnering." *Id.* Management's chief spokesperson responded by expressing a concern about "frequent demands to bargain for additional official time," since labor relations were "predominately adversarial." *Id.* Council 214's chief spokesperson responded that "he would put the word out to [local unions] not to jerk [m]anagement around at those bases." *Id.* The minutes then note that "[t]he role of the Partnership Council in regard to [certain] bases was discussed." *Id.* Next, a management representative proposed "additional blocks of official time be granted . . . upon joint agreement of" Council 214 and AFMC. *Id.* In addition, a management representative "suggested the development of objective standards to determine the need for additional official time . . ." *Id.* After that, management's chief spokesperson "suggested a compromise that would link additional bargaining for blocks of official time . . . to approval of Council 214." *Id.* at 4. He also suggested language that would "require that such additional official time would be in the public interest and for the purpose of furthering improved partnership." *Id.* AFMC and Council 214 agreed on these points, though one management representative for four Air Force bases – Brooks, Eglin, Edwards, and Kirtland – withheld consent. *Id.*; Tr. 101. These negotiations ultimately led to provisions in the 2002 MLA, including Section 4.13, which was retained in the current MLA. *See* Jt. Ex. 10, MLA 2002 Negotiation Minutes Index; Tr. 83, 101. Based on the record, and in the absence of any argument to the contrary, I find that Section 4.13 in the 2002 MLA was substantively identical to Section 4.13 in the current MLA.

Article 4, Section 4.13 of the MLA, entitled "Full-Time Local Representatives," states, in pertinent part:

- a. 100 percent official time will be granted to full-time representatives in the quantities listed below at each installation to perform the specific functions listed in Section 4.06:

....

Eglin AFB (Local 1897) 2

Eglin AFB (Local 1942) 1

.....

b. 50 percent official time will be granted to one representative at AFMETCAL (Local 2221).

c. In addition to the full time authorizations above, with approval of Council 214, union representatives at Eglin AFB, Edwards AFB, or Kirtland AFB may request to bargain with local management officials when it is reasonable, necessary and in the public interest, and for the purpose of furthering improved partnership, to grant representational blocks of official time. Otherwise, representational official time will be granted under section 4.06, but without the limitations in section 4.07.

Jt. Ex. 3 at 12-13.

Article 4, Section 4.06, referenced in Section 4.13, is entitled "Functions for Which a Reasonable Amount of Official Time Is Authorized." Jt. Ex. 3 at 8. It provides that union representatives may be excused from work for "a reasonable amount" of official time to perform any of twenty-two representational activities, when it is "reasonable, necessary and in the public interest . . ." Activities include preparing for grievances, attending meetings with management, engaging in partnership activities, and "prepar[ing] responses to management-initiated correspondence." *Id.* at 8-9.

Article 4, Section 4.06 of the MLA states:

When work conditions are such that the steward/official may be excused from work, a reasonable amount of official time will be granted. Representatives will provide the supervisors sufficient information to allow the supervisors to understand the complexity of issues for which Official Time is requested. It is the parties' intent that any official time agreed to by the parties authorized under section 7131(d) of the Federal Service Labor[-]Management Relations Statute will be encompassed within one of the following activities. Official time which is reasonable, necessary and in the public interest will be granted for the following activities:

- (1) present grievances at any step of the Negotiated Grievance Procedure or associated Alternate Dispute Resolution Procedure as specified in Article 6;
- (2) represent an employee or the Union at an arbitration hearing;
- (3) appear as a witness at any step of a grievance;
- (4) appear as a witness at an arbitration hearing;
- (5) attend meetings scheduled by management;
- (6) meet and confer or consult with management;

- (7) represent an employee in appeal hearings covered by statutory procedures;
- (8) represent the Union on approved committees authorized by this Agreement;
- (9) represent the Union on the DoD wage fixing authority wage survey teams or other approved labor management fact-finding studies;
- (10) be present as an observer in an adverse action proceeding or grievance adjustment where the Union is not the employee's representative (subject to approval of the hearing officer in charge of the proceeding);
- (11) represent the Union in formal discussions involving personnel policies, practices, working conditions, or grievances between bargaining unit employees and management;
- (12) represent the Union in investigatory interviews between supervisors and employees in accordance with Article 5.03c;
- (13) participate in partnership activities as authorized by the installation Partnership Council;
- (14) participate in informal Unfair Labor Practice resolution proceedings with management officials;
- (15) prepare employee grievances and appeals;
- (16) prepare for meetings scheduled with management;
- (17) assist an employee when designated as their representative in preparing a response to a proposed disciplinary action;
- (18) prepare responses to management-initiated correspondence, including Promotion Plan Templates (Templates);
- (19) prepare Union grievances;
- (20) assist an employee in preparing a response to any personnel action resulting from a directed fitness for duty examination;
- (21) prepare for arbitration;
- (22) allow travel time to the applicable worksite or to/from the Union office to accomplish any of the above.

Article 4, Section 4.07 of the MLA states:

- a. When work conditions are such that the steward/official may be excused from work and the steward/official represents an employee from outside the representative's organizational area, not more than 12 hours per pay period of noncumulative, nontransferable official time will be authorized for stewards to perform those duties indicated in Section 4.06(15) through (22). It is understood that reasonable time will be granted under the circumstances in this Section for duties indicated in 4.06(1) through (14).
- b. Extensions for cases involving extraordinary situations may be granted upon mutual agreement of the local Union president and the activity Labor Relations Officer.

Jt. Ex. 3 at 9-10.

Article 4, Section 4.13(c) was applied by the Air Force and AFGE in May 2004, when AFGE, Local 1406, and Edwards AFB entered into a memorandum of agreement (2004 Edwards MOA) concerning official time at that facility. The 2004 MOA that was agreed upon granted preapproved blocks of official time to three union representatives (two were granted 50 percent official time, the third was granted 30 percent official time), to supplement the work of a representative already on 100 percent official time under Section 4.13(a). Jt. Ex. 9; Tr. 80-81. The 2004 MOA states that the official time "will be used only to accomplish functions in accordance with the [MLA], Article 4, Sections 4.06 and 4.08."² Jt. Ex. 9. The 2004 Edwards MOA was to be reviewed after two years; it states in this regard:

Since the purpose of these additional blocks of time is to further improve the partnership, the review will consider the use of informal resolution processes used, ADR (if appropriate), increased communication at the lowest level before elevating complaints, reasons for two or more reps at meetings, and overall appropriate use of official time.

Id.

The 2004 Edwards MOA agreement underwent agency head review prior to implementation and remains in effect at Edwards AFB. Tr. 57.

² Under the current MLA, Article 4, Section 4.08, entitled "Restrictions on Official Time," states in pertinent part, "No official time shall be authorized for functions not listed or referenced in this Article unless otherwise mutually agreed by the parties." Jt. Ex. 3 at 10. I note in this regard that the 2002 MLA is not in evidence, but that there is no claim that the cited portions of the 2002 MLA are different from the current MLA. See Tr. 83.

In 2007, the Agency and the Union entered into a local supplemental agreement (2007 LSA), which deals with record keeping and reports that representatives on 100 percent official time must provide to the Agency.

In January 2015, Local 1897 sought to increase the number of union representatives on “preapproved” official time at Eglin AFB beyond the two 100 percent official time positions provided to Local 1897 President Thaddeus Wallace and Executive Vice President Alan Cooper pursuant to Article 4, Section 4.13(c) of the MLA. Jt. Ex. 2; Tr. 21 59, 79. Cooper testified that the Union wanted additional representatives on preapproved official time, to help facilitate “employee moves and respond in general to Agency notifications, in addition to whatever else comes up under the [S]tatute that we are allowed official time to do.” Tr. 61.

On or about January 21, 2015, Wallace sent Council 214 President Troy Tingey a memorandum (Council 214 memorandum) seeking authority to bargain with the Agency over “blocks of official time” as was required by Section 4.13(c). Jt. Ex. 2. Wallace indicated that bargaining over additional blocks of official time would help the Union to “improve employee satisfaction, promote employee training and development, assist in the development of cooperative and productive labor-management relations and encourage the involvement of employees in workplace issues through their union representatives.” *Id.* Tingey signed the Council 214 memorandum, authorizing Local 1897 to bargain with the Agency. *Id.*

On January 26, 2015, Cooper asked the Agency to bargain over additional blocks of preapproved official time. He submitted a proposal that Local 1897 be allotted two additional representatives authorized to work fifty percent official time, to supplement the representational work of Cooper and Wallace. Cooper also included a signed copy of Council 214’s memorandum demonstrating that he had obtained Council approval. Tr. 22-23, 26, 60-61. The Agency responded shortly thereafter, refusing to bargain and asserting that the proposal did not meet the requirements of Article 4, Section 4.13(c) of the MLA. The Agency contended that the subject of official time was covered by Article 4, Section 4.13(b) of the MLA. Tr. 26-27, 48. The Union filed a grievance, which was ultimately denied, challenging the Agency’s refusal to bargain over the January proposal.³ Tr. 28.

On August 19, 2015, Cooper sent Agency representative Darcie Tavernier another memorandum requesting to bargain over a Union proposal for two representatives to work on official time 20 hours a week. Jt. Ex. 4; Tr. 14. (Cooper testified that he went from proposing 50 percent official time to 20 hours per week of official time because the parties were “getting hung up on words.”) Tr. 63. In the memorandum, Cooper asserted that the Union sought the extra official time to improve its ability to respond to Agency announcements of changes in conditions of employment, stating that stewards sometimes

³ There is no claim here that under § 7116(d) of the Statute, the grievance regarding the January 26, 2015, request to bargain should bar the ULP charge in this case, which concerns the August 27, 2015, request to bargain.

“don’t have the chance to regularly check their emails,” and that as a result, “some of the important notifications go unanswered, and the Union waives its right to bargain.” Jt. Ex. 4. Cooper added that the Union believed that the proposal was “reasonable, necessary and in the public interest . . .” *Id.*

On August 26, 2015, Tavernier met with representatives of the Union to discuss the latest proposal. During the meeting, Tavernier asserted that the proposal was covered by the MLA. Tr. 33. Later that day, Tavernier sent Cooper an email declining to bargain because “permanent appointments of official time . . . is covered by” Section 4.13(a) & (b), and because “[o]fficial time to respond to management-initiated correspondence is covered by” Sections 4.06 and 4.07. Jt. Ex. 5. (At the hearing, Tavernier stated that while she did not reference Article 4, Section 4.13(c) in the email, she told Cooper at the meeting that the Union’s proposal did not meet the “criteria” set forth in Section 4.13(c).) Tr. 34.

On August 27, 2015, Cooper sent Tavernier an email along with a modified proposal. Tr. 37, 65. The August 27, 2015, proposal, written in the form of a memorandum of agreement, called for one additional Union representative to work on 100 percent official time. Jt. Ex. 6. The August 27, 2015, proposal states that it was submitted “[i]n accordance [with]” Section 4.13(c); that it was submitted “to attain an improved Partnership and to improve the interaction between the Union and . . . Bargaining Unit Employee[s]”; and that the proposal was intended “to utilize official time that is reasonable, necessary and in the public interest, and to increase the efficiency of the service while ensuring bargaining unit employees . . . are represented when there is a matter that arises in the workplace that requires the performance of this duty by the Union.” *Id.* In the email, Cooper similarly asserted that the proposal would help the Union “to timely respond to Agency notifications and issues that arise during the course of a duty day from our bargaining unit.” Jt. Ex. 7 at 2. Cooper also asserted that the proposal was fair, since it would help the Union achieve an employee-to-full-time-representative ratio similar to the one held by Local 1942. *Id.* The next day, Tavernier replied that the Agency was refusing to bargain because “the permanent appointments of official time . . . is covered by MLA Section 4.13a and 4.13b.” *Id.* at 1.

On September 1, 2015, Cooper sent Tavernier and others an email asking whether the Agency was declaring the proposal nonnegotiable. Jt. Ex. 8 at 3-4. On September 9, 2015, Tavernier responded, ultimately asserting that the Agency was not claiming that the proposal was nonnegotiable, but that it was refusing to bargain because the proposal was covered by the MLA. Jt. Ex. 8 at 2-3. The next day, the Union filed the ULP charge in this case. GC Ex. 1(a).

At the hearing, witnesses discussed several issues related to the Union’s proposals. While Tavernier and Cooper both stated that Section 4.13(c) required the Union to get Council 214’s approval before submitting a bargaining request to the Agency (Tr. 42, 71), the two disagreed on whether the Union met other requirements set forth in Section 4.13(c).

With respect to Section 4.13(c) generally, Tavernier testified that a proposal meets the provision's requirements when "we all agree it's reasonable and necessary, in the public interest, and for the purpose of furthering improved partnerships." Tr. 42. Tavernier asserted that the Union's proposal on August 27, 2015, did not meet the criteria of Section 4.13(c). Tr. 42-43.

With regard to the minutes from the 2001 negotiations and partnership Tavernier testified that the minutes "specifically cites that the intent in there – the interest was to give some bases who needed partnering, who need to begin partnership, this provision so that the Union and management can work together to partner together to improve the working relationship to improve labor-management relations." Tr. 42. Therefore, Tavernier indicated, a request to bargain must "track[] that concept of partnership" *Id.*

Counsel for the General Counsel asked Tavernier whether "responding to notices wouldn't further partnership" Tr. 52. Tavernier answered, "Well, we don't see any issue – we've never – we don't have issues with the Union responding, so I mean we'd have to – we'd have to see." *Id.* Tavernier was also asked whether matters under Section 4.13(c) had to involve "partnership activities"; she answered that they did not. *Id.*

Respondent's counsel asked whether "just checking emails[]" would be a "partnering" activity. Tr. 53. Tavernier replied, "No, it would be the – it could be to respond to management, to the notifications as well. If we, you know, if we were implementing an –if we were undergoing a reorganization, it could mean a lot of things." *Id.* Respondent's counsel then asked, "Would it . . . only be emails or would it be more than emails?" Tavernier replied, "It would be more. They'd have to engage." *Id.*

Tavernier also suggested that Section 4.13(c) was designed to apply when there was a new, large project requiring negotiations, asserting that Section 4.13(c) would apply "[i]f we have a program that's going to last 5 years to roll out or to stand up and roll out, we may need a union representative on 100 percent official time to partner with the Agency to get this program implemented" Tr. 40. She also testified that Section 4.13(c) would apply when "we have a working group and we want to improve a process." Tr. 41.

When asked whether she believed that Section 4.13(c) does not encompass run-of-the-mill representational activities under Section 4.06, Tavernier answered that Section 4.13(c) does not encompass such activities, adding, "When I read the minutes [from the 2001 negotiations], that's how I'm reading it, is those – unless it was like a big initiative or something that would – it could meet [Section] 4.06 and it could also fall under [Section] 4.13(c)." Tr. 55-56.

With regard to the 2004 Edwards MOA, negotiated locally at Edwards AFB, Tavernier acknowledged that it was implemented under Section 4.13(c), and that it provided official time simply to accomplish functions listed in Section 4.06. Tr. 56-57. When Tavernier was asked whether this meant that Section 4.13(c) could apply to representational work described in Section 4.06. Tavernier replied, "That is what they negotiated at that base. Doesn't mean it's right." Tr. 57.

For his part, Cooper testified that the Union's request for more preapproved official time was consistent with the public interest and improved partnership, stating that "everything [the Union] submitted met the intent[]" of Section 4.13(c), even though the Union's proposals were for run-of-the-mill representational activities. Tr. 67-68, 75, 77.

POSITIONS OF THE PARTIES

General Counsel

The General Counsel argues that the Respondent's refusal to bargain over the August 27, 2015, proposal violated § 7116(a)(1) and (5) of the Statute. GC Br. at 19. In this regard, the General Counsel argues that the Respondent was obligated to bargain, under Section 4.13(c). GC Br. at 8. In support of this claim, the General Counsel asserts that: (1) Section 4.13(c)'s reference to "representational" official time indicates that official time in Section 4.13(c) can be used for all activities listed in Section 4.06; (2) Section 4.13(c)'s phrase "furthering improved partnership" is broad and encompasses all activities listed in Section 4.06; (3) bargaining history shows no waiver of the right to bargain over official time; and (4) the 2004 MOA shows that Section 4.13(c) allows for additional bargaining over official time. *Id.* at 13, 16-17. Further, the General Counsel contends that because Section 4.13(c) obligated the Agency to bargain, there is no basis for the Agency's claim that the Union's proposals were covered by Article 4, Sections 4.06, 4.07, and 4.13(a) & (b) of the MLA. *Id.* at 9-11.

Respondent

The Respondent argues that it lawfully refused to bargain over the Union's proposals because the Union "failed to meet a necessary element required by" Section 4.13(c) of the MLA, specifically, that requests to bargain official time be "for the purpose of furthering improved partnership." R. Br. at 4-5, 9. In this regard, the Respondent asserts that the Union proposed additional preapproved official time for "checking email," but did not explain how this was "for the purpose of furthering improved partnership." *Id.* at 5.

The Respondent also argues that if Section 4.13(c) were read broadly, then it could be in a "perpetual state of bargaining . . ." *Id.* at 7. The Respondent contends that the 2004 MOA does not bolster the General Counsel's case, because the 2004 MOA has been "overridden" by the current MLA. *Id.* at 8. The Respondent also contends that since the Union's proposals did not meet the requirements set forth in Section 4.13(c), the Union's proposals are covered by Article 4, Sections 4.06, 4.07, and 4.13(a) & (b) of the MLA. *Id.* at 4, 9. In addition, the Respondent asserts that the Union's proposals are covered by the 2007 LSA. *Id.* at 9.

DISCUSSION

Agencies are obligated to bargain during the term of a collective bargaining agreement on negotiable union proposals concerning conditions of employment not covered by the existing agreement, unless the union has waived its right to bargain about the subject matter involved. *U.S. Dep't of the Interior, Wash., D.C.*, 56 FLRA 45, 51-54 (2000). A

union may waive its right to engage in mid-term bargaining, either in a collective bargaining agreement, such as through a “zipper clause,” or during bargaining. In either case, the waiver must be clear and unmistakable. *Id.* at 53-54; *Headquarters, 127th Tactical Fighter Wing, Mich. Air Nat’l Guard, Selfridge Air Nat’l Guard Base, Mich.*, 46 FLRA 582, 583-85 (1992); *Internal Revenue Serv.*, 29 FLRA 162, 166 (1987). An agency that refuses to fulfill its mid-term bargaining obligations violates § 7116(a)(1) and (5) of the Statute. *U.S. DOL, OASAM, Dall., Tex.*, 65 FLRA 677, 685-86 (2011).

The Authority has long held that matters pertaining to the use of official time are fully negotiable conditions of employment (absent an emergency or other special circumstances, which do not exist here). *AFGE, Local 1770*, 64 FLRA 953, 957 (2010); *see also Nat’l Treasury Employees Union*, 52 FLRA 1265, 1286-87 (1997). The Respondent does not seriously dispute this; indeed, Tavernier admitted that the Agency was not challenging the negotiability of the Union’s August 27, 2015, proposal. Jt. Ex. 8. However, the Respondent argues that it had no obligation to bargain with the Union, because the Union failed to meet the requirements set forth in Article 4, Section 4.13(c) of the MLA.

An agency may argue that a contractual provision specifically permitted it to take a disputed action, in which case the Authority must determine the meaning of the parties’ collective bargaining agreement and resolve the ULP complaint accordingly. *IRS, Wash., D.C.*, 47 FLRA 1091, 1103 (1993) (*IRS*). An agency asserting a contract-based defense has the burden of establishing that the parties’ collective bargaining agreement allowed the agency’s actions. *Id.* at 1110. I note in this regard that parties may agree to define, or limit, their obligations to engage in mid-term bargaining. *Nat’l Treasury Employees Union*, 63 FLRA 299, 300 (2009). However, parties may also specifically agree to allow for mid-term bargaining, and in such cases, the covered-by doctrine does not apply. *U.S. Dep’t of Hous. & Urban Dev.*, 66 FLRA 106, 109 (2011) (*HUD*).

In determining the meaning of a collective bargaining agreement, the standards and principles of interpreting collective bargaining agreements applied by arbitrators and the federal courts are utilized. *IRS*, 47 FLRA at 1111. This involves a consideration of the express terms of the agreement, as well as the parties intent – as established by the wording itself, by inferences drawing from the contract as a whole, or by extrinsic evidence. *AFGE, Local 2192, AFL-CIO*, 68 FLRA 481, 483 (2015). An analysis of a contract may also take into account whether a given interpretation would clearly produce a harsh and inequitable result. *U.S. DOJ, INS, Wash., D.C.*, 52 FLRA 256, 261 (1996).

With these principles in mind, I turn to Section 4.13(c). The Respondent and the General Counsel do not seriously dispute that Section 4.13(c) requires bargaining in at least some circumstances, and both agree that Section 4.13(c) requires a local union to obtain authorization from Council 214 before requesting bargaining. The Respondent and the General Counsel disagree, however, as to what the other conditions of Section 4.13(c) require. They disagree generally as to the meaning and effect of the phrase “when it is reasonable, necessary and in the public interest, and for the purpose of furthering improved partnership,” and they disagree specifically as to the meaning and effect of the final part of the phrase, “furthering improved partnership.” Jt. Ex. 3 at 12.

It is clear enough that Section 4.13(c) requires bargaining over preapproved official time only after a local union has obtained permission from Council 214, but the meaning of the phrase “when it is reasonable, necessary and in the public interest, and for the purpose of furthering improved partnership,” is less clear. On the one hand, the phrase uses language (“reasonable,” “furthering improved partnership”) that is broad, supporting the General Counsel’s argument that the phrase permits virtually any request to bargain over official time. On the other hand, Section 4.13(c) uses conditional language and therefore must impose at least *some* limit on bargaining. Also, it is unclear when these conditions need to be met. On the one hand, the conditions are connected to a local union’s “request to bargain,” suggesting that the conditions must be met at or near the time of the request. On the other hand, the conditions pertain to the decision “to grant . . . official time,” suggesting that the conditions are intended to apply to the official time that the parties have agreed to over the course of bargaining.

These textual ambiguities can be resolved in large part by interpreting Section 4.13(c) in a manner consistent with its overarching intent, which is to provide for mid-term bargaining over preapproved official time. Consistent with Section 4.13(c)’s intent, it is reasonable to interpret Section 4.13(c) as providing that upon approval from Council 214, a local union is entitled to bargain over official time for the “representational” purposes listed in Section 4.06, and that a determination as to whether official time would be “reasonable,” “necessary and in the public interest” and “for the purpose of furthering improved partnership” is to be determined at the bargaining table prior to “granting” preapproved blocks of official time. With that said, even if Section 4.13(c)’s conditions were to be determined prior to bargaining, the conditions are broad, leading me to similarly conclude that if a local union has received Council 214’s approval, and if the local’s request pertains to official time for “representational” purposes listed in Section 4.06, then virtually any non-frivolous, good-faith request to bargain over preapproved official time would satisfy Section 4.13(c)’s conditions, including the conditions that the request be “reasonable,” “necessary and in the public interest,” and “for the purpose of furthering improved partnership.” Further, while the last part of this phrase is imprecise, it is hard to see how bargaining over an official-time activity specifically authorized by the MLA would *not* be for the purpose of furthering improved partnership. And whatever the precise definition of “furthering improved partnership” is, it does not require that official time be solely for the performance of partnership activities, a point Tavernier effectively conceded. Tr. 52.

I also base my interpretation on Section 4.13(c)’s bargaining history and its past application. With regard to bargaining history, AFMC wanted to avoid “frequent” or frivolous bargaining requests, and Council 214 recognized that AFMC had a legitimate interest in making sure that local unions not “jerk [m]anagement around,” i.e., that local unions not submit frivolous bargaining requests. Jt. Ex. 10, MLA Renegotiation Minutes, 9-20-2001, at 3. To further this mutual interest, the parties agreed that a local union must receive Council 214’s authorization before requesting bargaining, and the request must be “reasonable, necessary and in the public interest, and for the purpose of furthering improved partnership,” for “representational” official time. Jt. Ex. 3 at 12. While it is apparent that the parties agreed to these requirements to avoid frivolous bargaining requests, there is no evidence that these conditions were intended to require anything more than that. Further,

while there is passing reference to “partnership” in the minutes, there is no clear indication that bargaining over additional preapproved official time was limited to negotiations directly connected to partnership activities. *See* Jt. Ex. 10, MLA Renegotiation Minutes, 9-20-2001, at 3; Tr. 52. In addition, there is no evidence that during the course of bargaining, Council 214 clearly and unmistakably waived the right to bargain over preapproved official time at the bases and installations identified in Section 4.13(c).

With regard to past application of Section 4.13(c), the 2004 Edwards MOA shows that bargaining intended to “further improve . . . partnership” can result in grants of official time for run-of-the-mill representational activities, including all of the “functions” listed in Section 4.06. Jt. Ex. 9. If Section 4.13(c) did not allow this, the AFMC would not have approved the 2004 Edwards MOA upon agency head review, nor would it allow it to remain in effect to this day. *See* Tr. 56-57.

In sum, I find that the phrase “reasonable, necessary and in the public interest, and for the purpose of furthering improved partnership, to grant representational blocks of official time[.]” requires, at most, a non-frivolous, good-faith request to bargain over preapproved official time for purposes listed in Section 4.06. The Union easily met those conditions here. In this regard, the Union obtained permission to bargain from Council 214, and presented that authorization to Tavernier. Tr. 60. Further, the Union demonstrated that its request was not frivolous, but instead, a good-faith attempt to obtain additional preapproved official time so that the Union could carry out a “representational” responsibility listed in Section 4.06(18), specifically, “respon[ding] to management-initiated correspondence” concerning planned changes in conditions of employment. Jt. Ex. 3. Indeed, the Union went out of its way to show the Agency that its request was “reasonable,” “necessary and in the public interest,” and for “furthering improved partnership.” In the Council 214 memorandum, Wallace explained that official time would help the Union “improve employee satisfaction, promote employee training and development, assist in the development of cooperative and productive labor-management relations and encourage the involvement of employees in workplace issues through their union representatives.” Jt. Ex. 2. On August 19, 2015, Cooper similarly explained that additional official time would enable the Union to timely respond to management notices of planned changes in conditions of employment. Jt. Exs. 4 & 5. And on August 27, 2015, Cooper reiterated these points and added that the proposal would “attain an improved Partnership” Jt. Ex. 6. Taken as a whole, these explanations should have made it clear to management that the Union’s request was “reasonable,” “necessary and in the public interest,” and “for the purpose of furthering improved partnership.” Finally, since Section 4.13(c) requires the Respondent to bargain with unions located at the identified bases and installations, there is no basis for finding that the Union’s proposals were covered by Sections 4.06, 4.07, and 4.13(a) & (b), as claimed by the Respondent. *HUD*, 66 FLRA at 109.

The arguments to the contrary from the Respondent and Tavernier are not convincing. The Respondent contends that Section 4.13(c) should be interpreted as requiring that the parties agree, prior to bargaining, that Section 4.13(c)’s conditions have been met. But under that interpretation, the Agency could veto any request and avoid bargaining altogether. Such a result is clearly contrary to Section 4.13(c)’s intent. The Respondent’s argument is

essentially an assertion that Section 4.13(c) is a waiver of bargaining rights unless the Respondent agrees to participate, yet nothing in the text shows that Council 214 clearly and unmistakably waived the right to bargain over preapproved official time at the bases and installations identified within that provision.

The Respondent asserts that the Union's request was trivial, merely an attempt to "check[] email," and further claims that the Union failed to connect that need to the purpose of "furthering improved partnership." R. Br. at 5. But the Respondent misconstrues the Union's request, which sought official time to ensure that the Union could adequately respond to Agency emails announcing planned changes in conditions of employment. Jt. Exs. 4 & 5. Responding to such notices is one of the Union's fundamental responsibilities; indeed Section 4.06(18) specifically authorizes official time for that purpose. As discussed above, it is hard to see how bargaining over an activity listed in Section 4.06(18) would *not* be for the purpose of further improved partnership. Moreover, partnership is a system intended to promote open communications and a more equal relationship between labor and management (*see* Jt. Ex. 9), and this requires two equal and fully functioning partners, including a Union that can adequately communicate with management. For these reasons, I have no doubt that the Union's request was made for the purpose of "furthering improved partnership."

The Respondent contends that if the Union's request were held to meet the requirements set forth in Section 4.13(c), it could embolden the Union to constantly request bargaining over official time. R. Br. at 7. However, there is no evidence indicating that unions have used Section 4.13(c) to make frivolous requests previously, and no evidence to indicate that they will do so in the future. Furthermore, such fear evidences intent to never reach an agreement pursuant to bargaining. For if an agreement was reached, the issue would then be covered by the agreement and that would foreclose further negotiation. Accordingly, I reject this contention and caution the Respondent that it must bargain in good faith. The Respondent is also reminded that while it is obliged to bargain in good faith over additional official time, it must do so only at certain locations and after Council 214 has authorized the local union to seek such bargaining. Finally, the Respondent is free during negotiations to advocate for what it believes to be the proper amount of official time needed by that particular union at that location. If the parties cannot agree, it will be up to each side to justify their position before the Federal Service Impasses Panel. It should also be noted that Local 1897's argument that it should have more official time on a per capita basis because it represents 2700 employees with two 100 percent official time positions, while Local 1942 at the same base gets one 100 percent official time position for only 1000 employees is valid only if the workloads are similar on a per capita basis and Local 1942 actually needs a 100 percent official time position. It is entirely possible that Local 1942 was awarded too much official time per the MLA, and merely wanting more because another union got more is not a productive and efficient justification.

In addition, Tavernier made a number of claims about the meaning of Section 4.13(c), but her testimony was vague and often difficult to follow (she testified with regard to partnership that the minutes from 2001 "specifically cite[] that the intent in there – the interest was to give some bases who need partnering, who need to begin partnership, this

provision so that the Union and management can work together to partner”) (Tr. 42), and she repeatedly failed to provide concrete support for her interpretation of Section 4.13(c). Tavernier asserted that management needs to “agree” that a request meet the requirements of Section 4.13(c) before bargaining could begin, but she did not cite any evidence to support that claim. Tr. 42. Tavernier also asserted that Section 4.13(c) does not provide for official time for run-of-the-mill representational activities, but she failed to cite a specific passage in the minutes showing an intent to limit bargaining to official time for “big initiatives,” and no such limitation is apparent in the minutes, or in the text of Section 4.13(c). *See* Jt. Ex. 10, MLA Renegotiation Minutes, 9-20-2001, at 3-4. As Tavernier’s testimony on Section 4.13(c) was vague and as she provided no concrete support for her interpretation of Section 4.13(c)’s meaning, I give her testimony little weight because it is inconsistent with the 2004 Edwards MOU previously approved upon agency head review.

Finally, the Respondent argues that the August 27, 2015, proposal is covered by the 2007 LSA. R. Br. at 9. However, the official time provision of the 2007 LSA pertains only to records that must be kept for representatives who are already on 100 percent official time; it has absolutely nothing to do with the Union’s right to bargain over preapproved official time. *See U.S. Customs Serv., Customs Mgmt. Ctr., Miami, Fla.*, 56 FLRA 809, 813-14 (2000). Accordingly, I reject the Respondent’s argument as meritless.

CONCLUSION

The Union’s August 27, 2015, request to bargain over preapproved blocks of official time triggered the Respondent’s obligation to bargain, and nothing in Article 4, Section 4.13(c) of the MLA excused the Respondent from fulfilling that obligation. By refusing to bargain, the Respondent violated § 7116(a)(1) and (5) of the Statute.

Accordingly, I recommend that the Authority adopt the following order:

ORDER

Pursuant to § 2423.41(c) of the Authority’s Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of the Air Force, Eglin Air Force Base, Florida, shall:

1. Cease and desist from:

(a) Failing or refusing to bargain in good faith, as authorized by Article 4, Section 4.13(c) of the Master Labor Agreement (MLA), with the American Federation of Government Employees, Local 1897, AFL-CIO (Union/Local 1897), over additional blocks of official time to accomplish representational tasks.

(b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Post at its facilities where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander of Eglin AFB, and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(b) In addition to the physical posting, the Respondent will send, by email, the Notice to all employees in the bargaining unit represented by Local 1897. The message of the email transmitted with the Notice will state: "We are distributing the attached Notice to you pursuant to an Order issued by the Federal Labor Relations Authority in Case No. AT-CA-15-0819." The Respondent will send the Notice by email on the same day, as the physically posting of the Notice.

(c) Upon request, bargain in good faith with Local 1897 concerning proposed blocks of official time for representational purposes as authorized by Article 4, Section 4.13(c) of the parties' MLA by reaching agreement with Local 1897 or by bargaining to impasse over negotiable proposals submitted by the Union.

(d) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., May 31, 2016



CHARLES R. CENTER
Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of the Air Force, Eglin Air Force Base, Florida, violated the Federal Service Labor-Management Relations Statute (Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to bargain in good faith, as authorized by Article 4, Section 4.13(c) of the Master Labor Agreement (MLA), with the American Federation of Government Employees, Local 1897, AFL-CIO (Union/Local 1897), over additional blocks of official time to accomplish representational tasks.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.

WE WILL, upon request, bargain in good faith with Local 1897 concerning proposed blocks of official time for representational purposes as authorized by Article 4, Section 4.13(c) of the MLA by reaching agreement with Local 1897 or by bargaining to impasse over negotiable proposals submitted by the Union.

(Agency/Respondent)

Dated: _____

By: _____
(Signature) (Title)

This Notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Atlanta Region, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case No. AT-CA-15-0819, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Mark D. Halverson
Counsel for the General Counsel, ATLRO
Federal Labor Relations Authority
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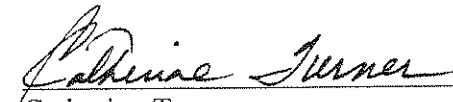
7015-0640-0005-6148-5752

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Catherine Turner
Office of Administrative Law Judges
Federal Labor Relations Authority

Dated: May 31, 2016
Washington, DC