

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

NATIONAL LABOR RELATIONS BOARD
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C.

and

NATIONAL LABOR RELATIONS BOARD
UNION

Case No. 07 FSIP 90

DECISION AND ORDER

The National Labor Relations Board (NLRB), Office of General Counsel (OGC), Washington, D.C. (Employer) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the National Labor Relations Board Union (Union or NLRBU).

Following an investigation of the request for assistance the Panel determined that the dispute, concerning a decision by the NLRB's General Counsel to require the American flag to be displayed by Board agents at the site of representation elections, should be resolved through an informal conference by telephone with Panel Member Richard B. Ainsworth. The parties were informed that if no settlement was reached, Member Ainsworth would notify the Panel of the status of the dispute, including the parties' final offers and his recommendations for resolving the impasse. After considering this information, the Panel would take whatever action it deems appropriate, which could include the issuance of a binding decision.

Pursuant to this procedural determination, Member Ainsworth convened a teleconference with the parties on October 24, 2007. Although the parties discussed various modifications to their proposals, no voluntary settlements were reached on any of the issues. The Panel has now considered the entire record,

including the parties' final offers and post-conference statements of position.

BACKGROUND

The Employer administers provisions of the National Labor Relations Act (NLRA), which vests it with the authority to, among other things, prosecute complaints in unfair labor practice (ULP) cases and resolve questions concerning representation between private sector employers and unions. The Union represents approximately 1,100 employees in a recently consolidated bargaining unit that includes all nonprofessional employees of the NLRB's headquarters office and the NLRB's OGC, and all professional employees of the OGC in the Regional, Subregional and Resident Offices.^{1/} There have been no negotiations between the parties over a collective bargaining agreement (CBA) governing the conditions of employment of the newly-consolidated unit. On July 24, 2007, however, the General Counsel and the NLRBU agreed to extend the two existing CBAs governing field office professionals and field office support staff, respectively, through the close of business on January 31, 2008.

ISSUES AT IMPASSE

The parties disagree on a variety of issues, among them, whether: (1) the Employer should purchase flags of differing weights and heights and, if so, Board agents should have the discretion to select which flag to display; (2) Board agents traveling via common carrier should be authorized to incur reasonably necessary excess baggage charges to transport the flag and accompanying luggage; and (3) the parties' Advisory

^{1/} The unit was officially certified in Case No. WA-RP-06-0019 on June 8, 2007, by the Federal Labor Relations Authority's (FLRA) San Francisco Regional Director, following a decision by the FLRA in NLRB and NLRBU, 62 FLRA No. 9 (March 14, 2007), affirming his finding that four previously separate bargaining units represented by the NLRBU should be consolidated into one unit. In addition, on November 5, 2007, an FLRA Administrative Law Judge (ALJ) found that the Employer violated the Statute when it refused to bargain with the Union as the exclusive representative of the consolidated unit certified in Case No. WA-RP-06-0019. The Employer has filed exceptions to the ALJ's decision with the FLRA.

Committee on Health and Safety (ACHS) and the Designated Agency Safety and Health Official (DASHO) should be involved in establishing weight and bulk standards for materials Board agents transport to elections prior to the implementation of the requirement to display the flag.

POSITIONS OF THE PARTIES

1. The Employer's Position

The Employer proposes that the first paragraph of the parties' MOA include wording specifying that the agreement is between "the General Counsel of the NLRB and the NLRBU." It also offers to: (1) purchase three wheeled luggage carriers for each Regional Office, and one wheeled luggage carrier for each Subregional and Resident Office, which may be used by Board agents to transport the voting booth, the flag kit and other materials to an election site; (2) authorize Board agents traveling via common carrier to incur excess baggage fees, to the extent necessary, to transport the American flag to and from an election site; (3) attach to the MOA instructions on flag etiquette and assembly that would be distributed to employees in all field offices, and provide training for each field office on flag etiquette and assembly within 90 days of the date on which the MOA is executed; (4) distribute hex nuts, screws, and/or socket wrenches, upon request of Regional management, to keep all flag kits complete and intact; (5) permit any Board agent who has concerns regarding the transport, assembly, or display of the American flag in connection with an election to raise such concerns with his or her supervisor; and (6) disseminate the MOA by "O[perations] M[anagement] Memorandum" and to post it on the Agency "SurfBoard."^{2/}

Overall, the Employer has presented "a package of reasonable proposals that address the concerns raised by the Union, recognizing that there is some minor impact on unit employees" in having to carry a flag "weighing approximately 5 pounds." Three additional wheeled luggage carriers for each office would ensure that there are enough carriers available to meet employees' needs, even though "the only change to the election process is the addition of the small, lightweight flag that fits neatly" into the collapsible voting booth "that Board agents have transported to elections for decades." The Employer

^{2/} See Attachment A for the complete text of the Employer's final offer.

also would pay excess baggage fees, where necessary, to transport an American flag (or flags) to and from an election site for employees traveling by air; this acknowledges that the weight of Agency equipment, when combined with a reasonable amount of personal luggage, may in some instances exceed an airline's weight limit. The Agency's flag assembly and etiquette instructions consist of "very straightforward documents that experienced Board agents should be able to easily understand." Providing training at each office within 90 days of implementation of the policy is a "reasonable response[] to the Union's stated concerns." Permitting employees to raise specific concerns regarding the transport, assembly and display of flags with their supervisors on a case-by-case basis is consistent with ongoing practices involving a host of other election-related concerns. Finally, the Employer's proposal to disseminate the parties' MOA by OM Memorandum and to post it on the Agency's intranet (*i.e.*, the "SurfBoard") comports with the parties' longstanding practices concerning the publicizing of labor-management agreements.

In general, the Union has offered "a number of frivolous proposals that go well beyond the scope of the proposed changes," and would delay implementation of the flag policy by shifting the debate "to the parties' [ACHS]." More specifically, the portions of its final offer that refer to flags or flag representations in addition to the one the General Counsel has selected for display interfere with management's right to determine the methods and means of performing work, under section 7106(b)(1) of the Statute, and are negotiable only at the Employer's election. In addition, the use of miniature flags would not achieve the General Counsel's goals of clarifying for voters that the election is being conducted by the U.S. Government and adding "solemnity and dignity to the proceeding." Shipping flags to employers' premises, among other things, could compromise an NLRB employee's neutrality if he or she is seen carrying election materials from the employer's offices. The proposal authorizing employees to incur excess baggage charges includes additional wording that is beyond the scope of the change (*i.e.*, "accompanying luggage") and could "lead to disputes about what is 'reasonable' as opposed to what is merely 'necessary'." The Union's proposed wording on the use of taxicabs "is simply an attempt to change a protocol where no change is necessary." In this regard, the Employer is not opposed to allowing employees to take taxis to and from elections "when appropriate," but the addition of a lightweight flag does not justify a different standard regarding the use of

taxicabs that "is likely to invite disputes over whether a denial of taxi fare is 'arbitrary' or 'unreasonable'."

The Union's proposal shielding employees from discipline for failing to display the flag at half mast unless they are specifically directed to do so interferes with management's right to discipline under section 7106(a)(2)(A) of the Statute. Its version of flag etiquette is abbreviated and provides little information to employees, and its proposed assembly instructions do not accurately describe the three-pole flag that will be used by all field offices; it also includes reference to the availability of lightweight flag alternatives that infringes on management's right to determine the methods and means of performing work. Of particular note, the Union's multi-part proposal involving the ACHS "is simply unnecessary" given the nature of the change at issue, "cumbersome," and "would unnecessarily delay implementation of the new flag policy." While the Union also "has not demonstrated any need" to require management to provide information on accommodating employees with religious beliefs in conflict with the change, "if such a situation were to arise, the best course for the employee would be to raise the matter with his or her supervisor, as envisioned by Agency Proposal 5."

The Union's proposals concerning employees' use of professional judgment regarding whether to display the flag or ask for additional help so the election can begin on time are unacceptable and inappropriate. In principle, assembly and display of the flag is another assignment of work in connection with conducting elections and does not merit special treatment. It also has not justified the need for requiring management to reimburse employees and outside parties for damage to property caused by the flag, nor does the Union have the authority to bargain on behalf of outside parties. The Union's proposal to link the MOA to General Counsel policy statements concerning display of the flag is contrary to longstanding practice whereby labor-management agreements are issued with a cover memo by the Associate General Counsel. It also "would likely be confusing to practitioners and other members of the public." The Union has not identified any portion of the MOA that might interfere with Government-wide regulations, the CBA, or other Agency policies, so its proposed wording that the MOA not diminish employee or Union rights is "vague and unnecessary." It is "the parties' longstanding practice not to place expiration dates on these types of stand-alone agreements, thereby allowing them to remain in effect unless one party seeks to reopen the subject during national agreement negotiations." Providing an expiration

date also "could create a great deal of confusion if the parties agree during national agreement negotiations" that the MOA should remain in place during the term of any successor agreement. Finally, the Union's Footnote 1, which would require that any terms imposed by the Panel be applied to all employees in the bargaining unit certified by the FLRA in Case No. WA-RP-06-0019, should be rejected. The Union's approach "would create confusion" because the parties have agreed that existing CBAs will continue through January 31, 2008, "and by doing so, [the parties] have maintained the existing unit structure." Moreover, the proposed change in conditions of employment applies only to field office employees because only field office employees conduct representational elections. Thus, "any terms imposed by the Panel should not be applied more broadly."

2. The Union's Position

Under the Union's proposed preamble, the MOA would specify that the agreement is between the "NLRB and the NLRBU." The Union also would require the Employer to distribute to each field office a 24" x 36" flag consisting of four flagpole pieces plus cap, and a flag or flag representation that weighs no more than 8 ounces in total; Board agents would be given the discretion to select which flag to take to the election, taking into account the practicability of carrying the total bulk and weight of all materials being transported. If management determines that Board agents should use the 24" x 36" flag, its proposal would grant them the discretion to determine whether the flag or voting booth should be shipped to the polling site via a commercial delivery service or hand carried. In addition, Board agents traveling via common carrier would be authorized to incur reasonably necessary excess baggage charges to transport the American flag and accompanying luggage on trips that include one or more elections, and Board agents' requests to use taxis and car service to travel to and from the polling site and the office and their homes would not be "arbitrarily or unreasonably denied." Furthermore, the Employer would be required to provide each field office with wheeled luggage carts (and adjustable handles) of sufficient strength and size to support a voting booth, flag and carrying case, an election kit in a litigation-bag type case, and three wheeled luggage carriers for each Regional Office and one wheeled luggage carrier for each Subregional and Resident Office, in addition to existing wheeled carriers used as litigation bags and for similar purposes.

The Union also proposes that no employee be disciplined for failing to display the American flag at half mast unless he

or she is specifically directed to do so. The Employer would have to distribute hex nuts, screws, and/or socket wrenches, upon request of Regional management, to keep all flag kits complete and intact, and the Union's preferred instructions on flag etiquette and assembly would be attached to the MOA and distributed to employees conducting elections. Training would be provided in each field office on flag etiquette and assembly within 90 days of the date on which the MOA is executed. Information would be given to employees through training sessions, written handouts, or both, on methods of carrying objects with the weight and bulk typical of those brought by Board agents to elections that minimizes risk of occupational injury, after the performance of a "work site and job analysis" by the ACHS. Information also would be disseminated to employees regarding the prevention and treatment of injuries caused by the handling of heavy and bulky objects, procedures for requesting reasonable accommodations of disabilities, and employees' rights under the Federal Employees' Compensation Act (FECA) and FECA claims procedures. The ACHS would prepare a written statement summarizing safe manual material handling practices which would be distributed to all professional employees and all support staff that perform elections and affixed to every voting booth. The DASHO would establish Agency standards in the handling of materials of weight and bulk typical of Board agents traveling to elections, considering the ACHS's recommendations, and Board agents would not be required to carry materials to elections that exceed the established Agency weight standards. In this regard, alternative approaches would include assignment of additional Board agents to the election, delivery of materials to polling places via commercial delivery services, and the use of manual assistive devices. The Employer would provide each field office with access to equipment, such as scales, enabling employees and management to determine whether files, supplies and equipment brought on field trips exceed the Agency's standard.

In addition to the foregoing, the Union's final offer would require the Employer to provide employees with information on procedures for requesting accommodation of the requirement to display the flag "that are based on *bona fide* religious beliefs." Board agents would be permitted to exercise professional judgment regarding how to proceed if flag assembly would delay the start of the election or if conditions in the polling area are inappropriate for display of the flag, including a decision to forego flag assembly; management would provide Board agents with telephone numbers for contacting a manager during non-office hours for guidance; and Board agents

could request assignment of additional Board agents if they believe this would ensure that the flag is assembled and the election is started on time. The Employer would have to reimburse employees and outside parties for damage to property caused by the flag in accordance with Government-wide rule and regulation. The MOA would be distributed by OM Memorandum and posted on the Agency "SurfBoard," and any General Counsel or OM memorandum to the staff would state that the memorandum be read in conjunction with the MOA and include a link to the SurfBoard page where the MOA is posted. Wording would be included in the MOA stating that it does not diminish any right of employees or the Union under applicable laws, Government-wide rule and regulation, CBAs or Agency policy, including reasonable accommodation of disabilities or religious practices and proper regard for employees' privacy and Constitutional rights. The MOA would remain in effect until successor CBAs to the field agreements signed on September 27, 2002, become effective. Finally, the MOA would apply to "all employees in the bargaining unit certified by the [FLRA] in Case No. WA-RP-06-0019."^{3/}

The Employer's final offer "fails to address the extra weight of the flag" and "makes no attempt to provide any alternative to ameliorate the extra burden" of requiring that it be displayed. Union proposals 1 through 4, on the other hand, would "ameliorate the burden caused by the need to display a flag at the election," in addition to the approximately 40-50 pounds of other items taken to elections and on field trips, "while affording the Agency maximum flexibility." In this connection, it would give employees the option of displaying a lightweight flag, or using a number of other alternatives, such as modifying Board agent badges to add a representation of the flag, rather than using the heavier flag the Employer has already purchased. If the Employer "determines that usage of the heavier flag is required," it would permit employees alternatives to hand-carrying the flag, such as shipping it to the voting site. Its proposals also ameliorate the burden by permitting employees to use taxis or incur "reasonably necessary" excess airline baggage fees to carry the flag or other equipment, and by requiring the Employer to furnish "sturdy wheeled luggage carriers" to carry election equipment. Contrary to management's contention, placing disassembled flags inside voting booths does not adequately address the adverse impact on employees; doing so would merely displace other items

^{3/} See Attachment B for the complete text of the Union's final offer.

employees normally carry to the election site, such as tape, ballots, signs, and files.

Its proposed instructions on flag assembly and etiquette are superior to the Employer's because they would be distributed only to employees conducting elections, rather than "to employees in all field offices." They are also superior because of their simplicity and practicality, i.e., they provide information that is necessary for a Board agent to set up the flag in front of contentious parties in the moments before the polls are supposed to open. The portion of its final offer that would create Agency weight standards through meetings of the ACHS and recommendations to the DASHO addresses the issue of the total weight and bulk of items that employees conducting elections now have to carry, and has "the potential to reduce Agency costs and lost work time while reducing employee injuries." While the Union believes the more reasonable approach would be for the Agency to inform employees when flags are to be flown at half mast, in the alternative, the MOA should "relieve employees of responsibility for failing to fly the flag at half-mast unless they have been specifically instructed to do so." It also should include information on religious accommodation because "some Union members" have expressed concern that displaying the flag is inconsistent with "deeply held beliefs." In addition, the portion of its final offer requiring management to provide Board agents with the telephone numbers of managers is better than the Employer's approach because it acknowledges that supervisory guidance may be necessary during early morning or late night hours. This is further justified by the fact that "elections are often conducted in dirty, greasy areas such as mines, storage rooms and mechanics rooms where display of the flag would not be appropriate."

Its proposed wording addressing the reimbursement of employees and outside parties for property damage caused by the flag should be adopted given the photographic evidence the Union has provided, and the experience of Union representatives who have found that "the base of the flags are sharp and inadvertently cause deep scratch marks and gashes on the surface of the table under the flag base." In addition, without a "link and reference" to the MOA, "over the passage of time" employees receiving the General Counsel's memorandum advising them of the decision to display the flag at elections may not be aware of the MOA's "mitigating effects." The Union's proposal addressing the non-waiver of employee and Union rights would prevent future litigation over the "waiver issue should a grievance or

complaint arise that may touch on the display of flags at elections." Given their recent history concerning the continued viability of numerous Memoranda of Understanding (MOUs), where the parties took nearly 2 years to review the status of 44 MOUs, specifying that the MOA will remain in effect until successor field CBAs become effective would eliminate future disputes over this matter. The parties could always agree to extend the MOA, incorporate it into the successor CBA, or resolve its status in some other way during successor CBA negotiations. Finally, adoption of the Union's preamble and its proposed Footnote 1 is consistent with the FLRA's recent consolidation of pre-existing bargaining units into a single unit. The Employer's proposed preamble, on the other hand, states that the MOA is "between the *General Counsel* rather than the unit described in the certification." The Union states, however, that it "does not elect to entertain permissive bargaining by altering the unit to anything other than the certified unit," and the Panel "must direct the parties to adopt an agreement that reflects the [FLRA's] certification and is applicable to the entire bargaining unit."

CONCLUSION

Having carefully considered the evidence and arguments presented by the parties in support of their positions concerning this matter, we shall order the adoption of a modified version of the Employer's final offer to resolve the impasse. Preliminarily, we note that the parties' proposed MOAs contain a number of similar, in some cases identical, provisions addressing the impact of management's decision to require Board agents to display the American flag at election sites. In our view, however, the Union has not demonstrated that the impact on Board agents would be so severe that the General Counsel's decision should be delayed while the parties, among other things, go through a time-consuming process resulting in the establishment of Agency weight standards. On balance, therefore, we are persuaded that the Employer's final offer provides the more reasonable approach to resolving the dispute.

After reviewing the entire record we also believe that some modification of the Employer's final offer is warranted to accommodate certain employee and Union interests. For example, ensuring that Board agent requests to use taxis are not arbitrarily denied, and permitting Board agents to incur reasonably necessary excess airline baggage fees to transport the flag and accompanying luggage would further mitigate the impact of management's decision, and to some extent merely

codifies current practices. A separate provision requiring management to inform employees when flags should be flown at half mast appears reasonable, and was proposed by the Employer during an earlier phase of the bargaining process. Moreover, given the amount of time the parties recently spent determining the status of a large number of mid-term MOUs, specifying that the MOA will remain in effect until successor field CBAs become effective should eliminate any future ambiguity in this instance. Accordingly, these, and a few other minor modifications to the Employer's final offer, are reflected in the order specified below.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel, under 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the parties to adopt the following wording:

MEMORANDUM OF AGREEMENT

This agreement between the Employer and the Union concerns appropriate arrangements and procedures arising from management's decision to display the American flag at voting locations in Agency-conducted representation elections.

1. The Agency will purchase three wheeled luggage carriers for each Regional Office and one wheeled luggage carrier for each Subregional and Resident Office. These luggage carriers may be used by Board agents to transport the voting booth, the flag kit and other materials to an election site.

2. (a) Board agents traveling via common carrier are authorized to incur reasonably necessary excess baggage charges to transport the American flag and accompanying luggage on trips that include one or more elections.

(b) Board agent requests to use taxis and car service to travel to and from the polling site, as well as between the office and their home (for instance, the morning after an evening election or the evening before an early-morning election) will not be arbitrarily or unreasonably denied.

3. The Employer's attached flag etiquette and assembly instructions will be distributed to employees in all field offices. Within 90 days of the date on which this agreement is executed, the Agency will conduct training in each field office on flag etiquette and assembly. When flags are to be flown at half mast, Agency management will provide notice either by email or by posting a notice on the Agency SurfBoard.

4. Upon request of Regional management, the Agency will distribute replacement hex nuts, screws, and/or socket wrenches in order to keep all flag kits complete and intact.

5. Any Board agent who has concerns regarding the transport, assembly, or display of an American flag in connection with an election may raise such concerns with his or her supervisor.

6. The Agency will disseminate this agreement by OM Memorandum and will post a copy on the Agency SurfBoard. Any General Counsel or Operations Management memo to the staff will state that the memo should be read in conjunction with this MOA and will include a link to the SurfBoard page where this MOA is posted.

7. This agreement does not diminish any right of employees or the Union under applicable laws, government-wide rule and regulation, collective bargaining agreements or Agency policy including reasonable accommodation of disability or religious practices and proper regard for their privacy and Constitutional rights.

8. This agreement will remain in effect until successor agreements to the field agreements signed September 27, 2002, become effective.

By direction of the Panel.

H. Joseph Schimansky
Executive Director

January 16, 2008
Washington, D.C.

ATTACHMENT A

Agency Final Offer 10/30/07

MEMORANDUM OF AGREEMENT

This agreement between the General Counsel of the National Labor Relations Board (Agency) and the National Labor Relations Board Union (Union), concerns management's decision to display the American flag at voting locations in Agency-conducted representation elections.

1. The Agency will purchase three wheeled luggage carriers for each Regional Office and one wheeled luggage carrier for each Subregional and Resident Office. These luggage carriers may be used by Board agents to transport the voting booth, the flag kit, and other materials to an election site.
2. Board agents traveling via common carrier are authorized to incur excess baggage fees, to the extent necessary, to transport an American flag (or flags) to and from an election site.
3. The attached flag etiquette and assembly instructions will be distributed to employees in all field offices. Within 90 days of the date on which this agreement is executed, the Agency will conduct training in each field office on flag etiquette and assembly.
4. Upon request of Regional management, the Agency will distribute replacement hex nuts, screws, and/or socket wrenches in order to keep all flag kits complete and intact.
5. Any Board agent who has concerns regarding the transport, assembly, or display of an American flag in connection with an election may raise such concerns with his or her supervisor.
6. The Agency will disseminate this agreement by OM Memorandum and will post a copy on the Agency SurfBoard.

FOR THE AGENCY:

FOR THE NLRBU:

Date: _____

Date: _____

BASIC FLAG ETIQUETTE

Standards for handling and displaying the American flag are set forth by the United States Code, enacted by Congress in 1942. The Federal code does not impose penalties for improper handling or misuse of the flag, but some states do have laws regarding this subject, and our fellow citizens expect the flag to be treated with respect.

The Basic Rule

Do not allow the flag to touch the ground, floor, water, or anything else beneath it. Fasten the flag securely to the pole so that it does not become soiled or damaged. Do not use it as a drapery, a table covering, or as a receptacle for carrying or holding anything.

Respect for the Flag

- No disrespect should be shown to the American flag. It should not be dipped to any person or thing. Regimental colors, State flags, and organization or institutional flags are to be dipped as a mark of honor.
- The flag should never be displayed with the union down, except as a signal of dire distress in instances of extreme danger to life or property.
- The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise.
- The flag should never be carried flat or horizontally, but always aloft and free.
- The flag should never be festooned, or drawn back in folds. It should always be allowed to hang free.
- The flag should never be fastened, displayed, used, or stored in such a manner as to permit it to be easily torn, soiled, or damaged in any way.
- The flag should never have placed upon it, nor attached to it, any mark, insignia, letter, word, figure, design, picture, or drawing of any nature.
- The flag should never be used as a receptacle for receiving, holding, carrying, or delivering anything.
- The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.

Steps for Assembling the Portable American Flag

- Each flag kit will contain the following components: one small American flag (attached to a pole section); one black flag stand; two additional gold-colored pole sections; one hex key wrench; one silver 2-inch insert for the base; one black ¼ inch screw; one gold-colored “Acorn Cap;” and two flag pole rings.
- To assemble the flag, follow these steps:
 1. Remove the black 2-part flag stand from the carrying case.
 2. Assemble the 2 parts forming a “T” shape. (The longer piece will be the bottom part of the “T” shape).
 3. Locate the black ¼ inch screw, and the silver 2-inch round insert.
 4. Place the 2-inch round insert on top of the round center hole of the flag stand.
 5. Insert the black ¼ inch screw through the center hole and into the bottom of the silver 2-inch round insert and tighten. (Use both hands.)
 6. Place the assembled stand on a flat surface with the insert completely vertical (pointing straight up).
 7. Remove the flag pole pieces from the carrying case. (Note: The flag should already be attached to one pole section).
 8. Insert the flagpole pieces into one another. (Note: One end of the flag pole will be smaller and should be the bottom).
 9. Locate the gold “Acorn Cap” from the carrying case and attach it to the top end of the assembled pole.
 10. Slide the assembled American flag onto the 2-inch round insert.

The flag is now assembled and ready for display.

ATTACHMENT B

Memorandum of Agreement

This Memorandum of Agreement (MOA) is the agreement of the National Labor Relations Board (Agency) and the National Labor Relations Board Union (Union or NLRBU), concerning appropriate arrangements and procedures arising from the Agency's decision that flags be displayed at elections conducted by the Agency¹.

1. The Agency will distribute the following types of flags to each field office:
 - a. 24" x 36" flag consisting of four flagpole pieces, plus cap (assembled flagpole is about 54" tall);
 - b. A flag or flag representation that weighs no more than 8 ounces in total².

2. (a) Before commencing travel to the polling site, the Board Agent will choose one of the flags described in Section 1 and take the flag to the election. In selecting the flag, the Board Agent will take into account the degree to which carrying the flag with other material will be impracticable and will consider Board Agent's ability to carry the total bulk and weight of all materials being transported.

(b) If management determines that the Board Agent should use the flag described in Section 1(a) of this agreement (the 24" x 36" flag), it will inform the Board Agent as soon as possible. Normally, the flag or voting booth will be sent to the polling site via a commercial delivery service such as the United States Postal Service or Federal Express unless the Board Agent states that they wish to carry the flag and voting booth. If the flag or voting booth is sent via commercial delivery service, the Agency will include instructions for return of the item to the Agency via commercial delivery service. The Election Order Sheet will be modified to reflect the date that the flag or voting booth should be received at the election site (normally no later than the day before the election)³.

3. (a) Board Agents traveling via common carrier are authorized to incur reasonably necessary excess baggage charges to transport the flag and accompanying luggage on trips that include one or more elections.

(b) Board Agent requests to use taxis and car service to travel to and from the polling site, as well as between the office and their home (for instance, the morning after an

¹ This agreement applies to all employees in the bargaining unit certified by the Federal Labor Relations Authority in Case No. WA-RP-06-0019.

² Management may exercise its discretion to determine the type of flag or flag representation that meet the criteria of Section 1(b), which may include, for example:

- 4" x 6" flag mounted on a small pole, and base, similar to the flag and base advertised at http://www.flags.com/American-Spearhead-Flags/c1_279_8767/index.html;
- 12" x 17" flag available at local drug stores;
- Flag sticker that will fit on a ballot box (the "Ballot Box" sticker, form NLRB-730, may be modified to add a flag);
- Board Agent badge that contains a representation of the flag.

evening election or the evening before an early-morning election) will not be arbitrarily or unreasonably denied.

4. The Agency will provide each field office with wheeled luggage carts of sufficient size and strength to support a voting booth, flag and carrying case, and an election kit in a litigation-bag type case⁴. The height of the luggage cart handle will be adjustable. The Agency will provide three wheeled luggage carriers for each Regional Office and one wheeled luggage carrier for each Subregional and Resident Office, in addition to existing wheeled carriers used as litigation bags and similar purposes.

5. No employee will be disciplined for failing to display the American flag at half mast unless he or she is specifically directed to do so.

6. Upon request of Regional management, the Agency will distribute replacement hex nuts, screws and/or socket wrenches in order to keep all flag kits complete and intact.

7. (a) The attached flag assembly and disassembly instructions, and flag etiquette, will be distributed to employees conducting elections.

(b) Within 90 days of the date on which this agreement is executed, the Agency will conduct training in each field office on flag etiquette and assembly.

(c) As part of the Agency's health and safety program under governmentwide rule and under the collective bargaining agreements, the Agency will provide information on methods of carrying objects with the weight and bulk typical of a Board Agent on the field trip that includes an election that minimize risk of occupational injury. The information may be provided through training sessions, through written handouts, or both.

(i) Before the information is disseminated, the Advisory Committee on Health and Safety ("Advisory Committee") will jointly perform a work site analysis and job analysis. The Advisory Committee will recommend an Agency standard in the handling of manual materials, including weight and bulk standards, to the Designated Agency Safety and Health Official established pursuant to 29 CFR 1960.6.

(ii) The information disseminated to employees will include prevention and treatment of injuries caused in handling of heavy and bulky objects; procedures for requesting reasonable accommodations of disabilities; employee rights under Federal Employees Compensation Act; and FECA claims procedures.

(iii) The Advisory Committee will prepare a written statement summarizing safe manual material handling practices. A copy of the

⁴ The luggage cart shown in attachments "Flag Photos 010.jpg", "Flag Photos 012.jpg" and "Flag Photos 016.jpg" to the Agency's October 23, 2007 12:11 p.m. e-mail to the Federal Service Impasses Panel and NLRBU in Case No. 07 FSIP 90 meet this criteria.

written statement will be distributed to all professional employees and all support staff that perform elections and will be affixed to every voting booth.

(d) The Designated Agency Safety and Health Official, as set forth in 29 CFR 1960.6, shall establish the Agency's standard in the handling of materials, of weight and bulk typical of Board Agents traveling to elections. In setting the Agency standard, the DASHO will consider the Advisory Committee's recommendation.

(e) Employees will not carry files, supplies and equipment if the total weight and bulk brought on a field trip that includes an election exceeds the Agency's standard established pursuant to sub-paragraph (d). Alternatives may include assignment of additional Board Agent(s) to the election, delivery of supplies or equipment to the polling site via commercial delivery service such as the USPS or FedEx, and use of manual assistive devices.

(f) The Agency will provide each field office with access to equipment such as scales that will enable employees and management to determine whether files, supplies and equipment brought on a field trip exceeds the Agency's standard.

8. The Agency will provide employees with information on Agency procedures for requesting accommodation of the requirement that the flag be displayed that are based on bona fide religious beliefs.

9. (a) If flag assembly may delay the start of the election, the Board Agent will exercise professional judgment whether to start the pre-election conference early, delay the start of the election or forego assembly of the flag.

(b) If management has directed the Board Agent to display the flag and the Board Agent finds that the conditions in the polling area are inappropriate for display of the flag (grime, dirt, grease, etc.), the Board Agent will inform management. Management will provide a telephone number for use in contacting a manager during non-office hours⁵. If the Board Agency is unable to reach management, the Board Agent will exercise professional judgment in deciding whether to display the flag.

(c) If the Board Agent conducting the election believes that an additional Board Agent will help assure that the flag will be assembled and the election will start on time, the Board Agent may request that a second Board Agent accompany them to the election.

10. The Agency will reimburse employees and outside parties for damage to property caused by the flag in accordance with governmentwide rule and regulation.

⁵ All election work, including pre-election conferences and counts, performed outside the Board Agent's scheduled hours and which is directed, authorized or approved pursuant to Article 21 of the field agreements and the "Implementing Memo - Art. 21" agreement of August 20, 2002, is compensable.

11. The Agency will disseminate this agreement by OM Memorandum and will post a copy on the Agency SurfBoard. Any General Counsel or Operations Management memo to the staff will state that the memo should be read in conjunction with this MOA and will include a link to the SurfBoard page where this MOA is posted.

12. This agreement does not diminish any right of employees or the union under applicable laws, governmentwide rule and regulation, collective bargaining agreements or Agency policy including reasonable accommodation of disability or religious practices and proper regard for their privacy and constitutional rights.

13. This agreement will remain in effect until successor agreements to the field agreements signed September 27, 2002 become effective.

FOR THE AGENCY:	FOR THE NLRBU:
<hr/>	<hr/>
(Signature)	(Signature)
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(Title) (Date)	(Title) (Date)

ATTACHMENT TO MEMORANDUM OF AGREEMENT:

INSTRUCTIONS FOR ASSEMBLING THE FLAG

Basic Flag Etiquette

Standards for handling and displaying the American flag are set forth by the United States Code. This federal code does not impose penalties for improper handling or misuse of the flag.

Basic flag etiquette is posted on the SurfBoard, but the basic rule of thumb in handling the flag can be summarized as “use common sense”. Take care to treat the flag with respect by adhering to the following:

DO NOT INTENTIONALLY

- soil or damage the flag
- allow the flag to touch the ground, floor or water beneath it.

If the flag is in such a condition that it is no longer a fitting emblem for display, return it to your office manager for proper destruction.

Steps to Assemble the Portable US Flag

There are two versions of the 4-foot to 4 ½ foot flag contained in each black carrying case provided to each office: (1) one having two gold pole parts and (1) one having four gold pole parts. In addition, a lighter weight 4” x 6” flag, ballot box flag sticker, and “Board Agent” badge with flag, are available if carrying the larger, heavier flag is impracticable. Use your discretion, based on the conditions of your polling place, to decide which is more appropriate.

1. Parts needed to assemble the 4-foot flags:

- a. 2-piece metal stand (black)
- b. 2” long, round metal insert (silver)
- c. 1 screw- ¼” long (black)
- d. 1 black “L” wrench
- e. Pole with attached flag and acorn cap
- f. Either:
 - i. 2 long gold poles (approximately 29” long) or
 - ii. 4 short gold poles (approximately 16” each, and each should have one tapered end)

2. Assemble the base

- a. Take the two black metal parts and place the longer piece on the bottom to form a “T” shape

- b. Place the 2" long insert on top of the center hole of the flag stand and hold with one hand
- c. With other hand, insert the ¼" long screw into the bottom of the flag stand and screw and secure it into the insert using the "L" wrench.
- d. Place assembled stand on a flat surface with the insert facing upward

2. Assemble the flag pole

a. If using the two-part flag pole:

- i. Insert the tapered end of the long pole into the pole with the attached flag.
- ii. Slide the assembled flag pole onto the 2" insert protruding from the base.

b. If using the four-part flag pole:

- i. Slide one short pole, tapered side up, onto the 2" insert protruding from the base.
- ii. One by one, add two of the short poles with the tapered side up.
- iii. Slide the assembled flag onto the top of the poles.

3. Your flag is now assembled and ready for display.