August 1, 2018

Dear Union Bargaining Team,

The Union has made clear in negotiation calls its desire to keep the contract largely unchanged. In order to respect and follow the Union’s desire, instead of going over the contract article by article and red-lining changes as we have been doing in these negotiations, we are open to the approach of rolling over the existing contract and agreeing to a Memorandum of Understanding, reflecting changes to the below areas of the contract, after we have negotiated them.

Below are the subjects we would be willing to limit negotiations to, as well as our proposals on each topic. We have also attached a draft Memorandum of Understanding, which reflects these proposals.

We hope that everything proposed below reflects the deep admiration and respect that Management has for our employees and their labor. These changes are meant to help the Guild grow, while preserving the stability and benefits the contract currently provides.

We look forward to your feedback.

Best,

Elena (on behalf of Management negotiation team)
Management Shortlist of Proposed Changes to NLG CBA

1. Proposal re: Persons Included in Bargaining Unit

Leave Article 1 contractual language as is.

Reiterate that the contract requires the exclusion of persons who (a) primarily function as managers; (b) whose job duties are predominately managerial; (c) are expected to exercise a high degree of discretion as to how they perform their duties for the chapter and project; or (d) who supervise other staff.

Also state that where a project/chapter’s Board has declared that their project/chapter Executive Director does (or does not) primarily function as a manager, exercise a high degree of discretion, or have staff that they supervise, and the ED agrees with this declaration, then that agreement will be deemed determinative and conclusive, thereby preserving local chapter/project autonomy on whether or not the ED will be considered in or out of the bargaining unit, unless the job duties of the chapter/project ED change substantially in the future, at which time the project/chapter’s Board will reevaluate their decision on a case by case basis.

If there is no agreement between the chapter/project and their ED as to whether managerial duties predominate, the amount of discretion in the performance of required duties or as to the EDs responsibility to supervise other staff, then the ED inclusion/exclusion issue may be determined through arbitration.

2. Proposal re: Time Sheets

In order for both staff and management to fairly assess compliance with the agreement stated in paragraph 1, to ensure compliance with applicable wage and hour laws, and for other management purposes, (e.g., to better allocate available staff resources, etc.), all NLG personnel including EDs, may (not “shall” but “may”), be required by local chapters, projects or the national office, to keep detailed time records of what work they perform down to the level of fractional hours and for each task, similar to level of detail attorneys use for billing purposes and fee recovery. The level of detail can be subject to local bargaining where requested.

3. Proposal re: Overtime

Guild employees (a) who meet the test for exemption from the payment of overtime under federal and state laws and exclusion from the bargaining unit under Proposal 1 above (the standards for which are intended to be identical) and (b) NLG staff attorneys, will be exempt from the payment of overtime.

Instead, those excluded under paragraph 1 and NLG staff attorneys will be entitled to compensatory time off (“CTO”) after 50 hours of work in a workweek, at a 1:1 ratio (one hour or fractional hours of CTO for each hour or fractional hours
exceeding fifty (50) in a week). This is subject to a cap of 70 accrued hours per fiscal year.

As per the current contract, all non-exempt employees will receive overtime if they work over 35 hours in a week. Non-exempt employees may request CTO in lieu of overtime in states permitting this practice. Where permitted, CTO shall be credited on the minimum basis or ratio provided for by applicable state law (e.g., in CA, a 1.5 to 1 ratio for non-exempt employees). This is subject to a cap of 70 accrued hours per fiscal year.

4. Proposal re: Scheduling Compensatory Time Off, Personal Leave, Discretionary Holidays and Vacation Days

Chapters/projects may locally negotiate “black out” days (e.g., 30 days prior to the Guild's national convention for national office employees, 30 days prior to annual fundraising events, dinner or similar events, for projects and chapters).

Subject to these “black out” dates, Guild employees may continue to take CTO days off, vacation days, discretionary Holidays and/or Personal Leave days off of their choice. Employees will give as much advance notice as possible for foreseeable events or needs. This will be subject to Employer approval for requested time off within two weeks of a request, which shall not be unreasonably withheld. More notice is required the more consecutive days off as are requested; less, or possibly no, notice is required where there is a need to take time off and recover for an unforeseeable situation or family or personal emergency necessitates the requested time off.

5. Proposal re: Unpaid Leaves

Because of the special needs and low staffing of most Guild chapters, projects and the national office, and the great difficulty of replacing Guild staff, unpaid leaves shall be limited to two months, and only if requested six months in advance. The employee must provide a date for a return to work, to facilitate planning and possibly the hiring of replacement employees or other staffing arrangements. Unpaid leaves of less duration shall require proportionally less advance notice, e.g., a one-month unpaid leave request must be given at least three months in advance, etc.

For self or family medical needs, such as parenting, employee unpaid leave can be expanded from the six months provided for in the current CBA, also subject to a request six months in advance if possible.

6. Proposal re: Changes in Job Descriptions

Notwithstanding anything in the CBA to the contrary, and in conformance with Article 14.4, changes in job descriptions shall be preceded by advance notice and an opportunity by the union to request local bargaining. Where an agreement on new or modified job descriptions cannot be obtained through good faith bargaining, the
new or modified job descriptions are subject to the grievance procedure but without recourse to arbitration and notwithstanding any other provision of the Agreement.

7. Proposal re: Compensation

The minimum wage for all Guild employees shall be increased to $15.00 an hour with annual adjustments in that wage based on the federal cost of living inflation measures. Local chapters will implement higher standards where the same are the subject of local legislation.

All Guild-affiliated entities will implement a 401(k) defined contribution benefit for all staff after three years of continuous employment (starting with the employee’s anniversary of employment date), the details of which shall be locally negotiated, but at a minimum, providing for a minimum annual employer matching contribution, of 5% of annual compensation from regular wages or salaries. The same shall be put into effect within six months of the adoption of this Side Letter.

Medical, dental, life and disability Insurance benefits will be bargained over and be implemented on a local basis, taking into account the local availability of different plans, the preferences of employees and other local conditions.

8. Proposal re: Employee Evaluations

Modify the Job Evaluation Article, Article 16, to provide that job evaluations can be grieved but are not subject to arbitration.

Modify the Job Evaluation Article, Article 16, to provide that when an employee has submitted a self-evaluation without a prior management evaluation, management shall have 30 days to respond with its management evaluation.

Job evaluations may be disclosed to mediators or arbitrators during the grievance process if relevant to establishing some aspect of “just cause,” for example, whether and to what extent, an employee was put on notice as to some aspect of the employer’s job expectations, personnel policies or a deficiency in the employee’s work performance needing improvement.

9. Proposal re: Changes in Working Conditions

Article 22, “No Derogation” sub-section 22.2, is amended to say that grievances challenging changes in working conditions are not subject to arbitration.

10. Proposal re: Future renegotiation of the CBA

Article 25, “Term of the Agreement,” is amended to provide that either party may request a re-opening of the Contract and this MOU and the re-negotiation of some
part or all of the contract and this MOU, by providing the other party with sixty-day written notice of such a desire any time after July 1, 2020.

11. Proposal re: **Amount of Vacation Leave, Sick Days, Personal Leave Days, and Holidays**

Management requests no changes be made to the amount of vacation leave, sick days, Personal Leave Days or Holidays, which, if one takes all of their annual sick leave, could amount to 52 days off of work in a year.
PROPOSED MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding or “MOU” is intended to modify and amend the underlying collective bargaining agreement, (the “CBA” or “Contract”), by and between the National Organization of Legal Services Workers and the National Lawyer’s Guild. To the extent articles or sections of the CBA are not mentioned in this MOU, they are intended to continue in effect. Otherwise, the parties’ underlying CBA are modified as set forth below. This MOU shall be deemed to have merged with the underlying CBA and both may be modified in future bargaining in a modified Article 26, “Term of the Agreement,” as provided for in paragraph X below. All references herein to “chapters” or “projects” of the Guild apply to the Guild’s national office. References to something being subject to “local bargaining” refers to bargaining under Articles 22 and 25, and also applies to bargaining for the terms and conditions of employment of the national office staff.

1. The contract requires the exclusion of persons who (a) primarily function as managers; (b) whose job duties are predominately managerial; (c) are expected to exercise a high degree of discretion as to how they perform their duties for the chapter and project; or (d) who supervise other staff.

Where a project/chapter’s Board has declared that their project/chapter Executive Director does (or does not) primarily function as a manager, exercise a high degree of discretion, or have staff that they supervise, and the ED agrees with this declaration, then that agreement will be deemed determinative and conclusive, thereby preserving local chapter/project autonomy on whether or not the ED will be considered in or out of the bargaining unit, unless the job duties of the chapter/project ED change substantially in the future, at which time the project/chapter’s Board will reevaluate their decision on a case by case basis.

If there is no agreement between the chapter/project and their ED as to whether managerial duties predominate, the amount of discretion in the performance of required duties or as to the EDs responsibility to supervise other staff, then the ED inclusion/exclusion issue may be determined through arbitration.

2. In order for both sides to fairly assess compliance with the agreement stated in paragraph 1, and to ensure compliance with applicable wage and hour laws, and for other management purposes, (e.g., to better allocate available staff resources, etc.), all NLG personnel including EDs, may (not “shall” but “may”), be required by local chapters, projects or the national office, to keep detailed time records of what work they perform down to the level of fractional hours and for each task, similar to level of detail attorneys use for billing purposes and fee recovery) but the level of detail being subject to local bargaining where requested.

3. Guild employees including Executive Directors and NLG staff attorneys and possibly other professionals, who meet the test for exemption from the payment of overtime under federal and state laws and exclusion from the bargaining unit under paragraph 1 above, (the standards for which are intended to be identical), will be exempt from the payment of overtime but will be entitled compensatory time off or “CTO” after 50 hours of work in a workweek, but at a 1:1 ratio, (one hour or fractional hours of CTO for each hour or fractional hours exceeding fifty (50) in a week for staff attorneys or 45 hours in a week for all
other exempt employees, subject to a maximum accrual of 70 hours of CTO. All non-exempt full-time and part-time employees will receive overtime or possibly, CTO in lieu of OT, in states permitting that practice, for hours worked in excess 35 hours in a week subject to the same 70-hour “cap” or maximum amount of CTO hours, after which overtime shall be compensated in cash. (CTO is unlawful under federal wage and hour laws, but state law may displace federal law in this area.) Where permitted, CTO shall be credited for non-exempt employees on the minimum basis or ratio provided for by applicable state law, (e.g., in CA, a 1.5 to 1 ratio.)

4. Scheduling CTO, Personal Leave, Discretionary Holidays and Vacation Days: Subject to very limited “black out” days locally negotiated, (e.g., 30 days prior to the Guild’s national convention for national office employees, 30 days prior to annual fundraising events, dinner or similar events, for projects and chapters), Guild employees may continue to take CTO days off, vacation days, discretionary Holidays and/or Personal Leave days off, of their choice, but with as much advance notice as possible for foreseeable events or needs and subject to Employer approval for requested time off within two weeks of a request, which shall not be unreasonably withheld. More notice is required the more consecutive days off as are requested; less, or possibly no notice is required where there is a need to take time off and recover for an unforeseeable situation or family or personal emergency necessitates the requested time off.

5. Unpaid Leaves: Because of the special needs and low staffing of most Guild chapters, projects and the national office, and the great difficulty of replacing staff Guild staff, unpaid leaves shall be limited to two months, and only if requested six months in advance and the employee must provide a date for a return to work, to facilitate planning and possibly, the hiring of replacement employees or other staffing arrangements. Unpaid leaves of less duration, shall require proportionally less advance notice, e.g., a one-month unpaid leave request must be given at least three months in advance, etc.

6. Changes in job descriptions: Notwithstanding anything in the CBA arguably to the contrary, and in conformance with Article 14.4, changes in job descriptions shall be the subject of local bargaining. Where an agreement on new or modified job descriptions cannot be obtained through good faith bargaining, the new or modified job descriptions are subject to the grievance procedure but without recourse to arbitration and notwithstanding any other provision of the Contract arguably to the contrary.

7. Improved Compensation: The minimum wage for all Guild employees shall be increased to $15.00 an hour with annual adjustments in that wage based on the federal cost of living inflation measures. Local chapters will implement higher standards where the same are the subject of local legislation. All Guild-affiliated entities will implement a 401(k) defined contribution benefit for all staff after three years of continuous employment (starting with the employee’s anniversary of employment date), the details of which shall be locally negotiated, but at a minimum, providing for a minimum annual employer matching contribution, of 5% of annual compensation from regular wages or salaries, (e.g., excluding overtime). The same shall be put into effect within six months of the adoption of the new contract and this Side Letter. Medical, dental, life and disability Insurance benefits will be
bargained over and be implemented on a local basis, taking into account the local availability of different plans, the preferences of employees and other local conditions.

8. The Job Evaluation Article, Article 16, is amended to provide that job evaluations can be grieved but are not subject to arbitration and when an employee has submitted a self-evaluation without a prior management evaluation, management shall have 30 days to respond with management’s evaluation. Additionally, Job evaluations may be disclosed to mediators or arbitrators during the grievance process if relevant to establishing some aspect of “just cause,” for example, whether and to what extent, an employee was put on notice as to some aspect of the employer’s job expectations, personnel policies or a deficiency in the employee’s work performance needing improvement.

9. Article 22, “No Derogation” sub-section 22.2, is amended to say that grievances challenging changes in working conditions are not subject to arbitration.

10. Article 25, “Term of the Agreement,” is amended to provide that either party may request a re-opening of the Contract and this MOU and the re-negotiation of some part or all of the contract and this MOU, by providing the other party with sixty-day written notice of such a desire any time after July 1, 2020.