

LABOR RELATIONS REFERENCE GUIDE

For Labor Relations Specialists

Part I - Quick Reference
Part II - In Depth Knowledge

Written/Compiled By:

Major Jay Peno, GA ANG
Chief-Labor & Employee Relations
Georgia National Guard
Human Resources Office



Stay off the Hook...Check the Book!!!

(Blank Page)

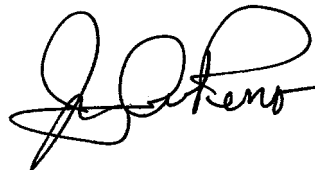
FOREWARD...

This book was written to assist all those who enter or deal with the exciting (exasperating, engaging, etc.???) field of National Guard Labor Relations. I felt a compilation of information from my own experience as well as a wide variety of sources would be very appropriate for both new and experienced labor specialists and supervisors who would like to know more about labor relations in the National Guard.

As I said, this book is a compilation from a wide variety of non-copyrighted sources and, lacking copyright citations, I would like to thank sources such as: The National Guard Bureau; FAS - Labor Relations Team; The AF JAG Central Labor Law Office; and other notes I have collected over my years as a Labor Relations Specialist and more recently as Chief - Labor & Employee Relations for the Georgia National Guard and LRAC Region C Representative.

I also need to thank the many people that have influenced my career in personnel and labor relations (this is by no means an all-inclusive list). My deepest appreciation goes to people such as: TAG-GA - MG David Poythress; My HRO/Mentor - Colonel Jimmy Davis; Mr. Wilson Fisher; LTC Charles Moulton; Ms. Paula Shipe; Mr. Everett Martin; Ms. Linda Norwood; CW4 Duke Borchardt; SMS Roger Hagan; Ms. Ellen Abott; CW4 Jerry Kidd; and all the other labor specialists and personnel specialists I have been fortunate enough to meet. You have mentored me and given me true support during my career as a Labor and Employee Relations Specialist.

I hope you find this book beneficial as a introduction or quick reference and welcome any comments or suggestions for additional topics or improvement you would like to share. Please enjoy and THANK YOU!!!

A handwritten signature in black ink, appearing to read "Jay A. Peno". The signature is fluid and cursive, with the first letters of the first and last names being significantly larger and more stylized.

Jay A. Peno
Maj, GA ANG
Chief-Labor & Employee Relations

(Blank Page)

CONTENTS

Topic _____ Page

Part I - Quick Reference

Code Summary - 5 USC Ch. 71, Labor Management Relations	1
Test Your Knowledge of Labor Relations!.....	3
Impact and Implementation (I & I) Bargaining	5
What Causes a Grievance?	7
Tips on Disciplinary and Adverse Actions	8
Introduction to Partnership	9

Part II - In Depth Knowledge

Special Emphasis Topics from DoD FAS with Q & A's.....	11
Interest Based Problem Solving.....	26
Preparing for Arbitration.....	28
Labor Relations Terms - Explained.....	36
"The Code" 5 USC, Ch. 71 - Labor Management Relations	55

Miscellaneous

Labor Relations Reference Websites and Sources	67
Points of Contact.....	68
Notes.....	69

(Blank Page)

FEDERAL LABOR / MANAGEMENT RELATIONS
SUPERVISOR'S QUICK REFERENCE GUIDE (excerpts from Federal Labor Law)

BASIC EMPLOYEE RIGHTS UNDER 5 USC CHAPTER 71:

An employee has the right to:

- ◆ FORM, JOIN, or ASSIST a labor organization;
- ◆ ACT AS A REPRESENTATIVE of a labor organization;
- ◆ BARGAIN COLLECTIVELY through a labor organization.

THE BARGAINING UNIT:

Certain employees are excluded from bargaining units by 5 USC 7112.

These are the exclusions:

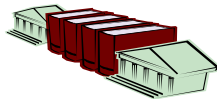
- ◆ Supervisors/Management officials;
- ◆ Employees engaged in personnel work (other than clerical);
- ◆ Employees working in a confidential capacity for officials who formulate general labor relations policy;
- ◆ Employees engaged in intelligence, or security work affecting national security;
- ◆ Employees investigating or auditing work or conduct of other agency employees;
- ◆ Professional employees unless a majority of the professionals vote for inclusion.

DEFINITION OF A SUPERVISOR:

A supervisor, under 5 USC 7103, is a person authorized, with respect to employees, to do at least one of the following:

- | | | |
|-----------|---------------------|------------|
| ✓ hire | ✓ promote | ✓ transfer |
| ✓ assign | ✓ direct employees | ✓ furlough |
| ✓ recall | ✓ discipline | ✓ suspend |
| ✓ lay off | ✓ reward | ✓ remove |
| | ✓ adjust grievances | |

or effectively recommend any such actions, if the exercise of such authority requires independent judgment. The number of employees supervised is not a relevant factor in this context.



UNION RIGHTS I/AW EXCLUSIVE RECOGNITION:

5 USC 71114 states that a labor organization which has been accorded exclusive recognition:

- ◆ may negotiate agreements for all employees in the collective bargaining unit;
- ◆ is responsible for representing the interests of all bargaining unit employees whether they are union members or not;
- ◆ must be given the opportunity to be represented at all formal discussions between management and employees concerning grievances, personnel policies and practices, or other general conditions of employment;
- ◆ must be given the opportunity to be present at any investigative examination of a unit employee, if:

(WEINGARTEN RIGHTS)

- ➔ the employee reasonably believes the examination may result in disciplinary action; and
- ➔ the employee requests representation.

FORMAL DISCUSSIONS UNDER 5 USC CHAPTER 71:

Generally, a meeting between management and an employee would be classified as formal when:

- ◆ more than one employee is impacted by the decisions reached or more than one management official is present at the meeting; or
- ◆ the meeting may result in a decision on an employees grievance.
- ◆ A meeting would usually not be classified as a formal discussion when:
 - ➔ the meeting is for a "personal counseling" session and does not involve matters affecting general working conditions; or

- the discussion is not at a level which could result in settlement of a grievance and there is no potential impact on other bargaining unit employees.
- ◆ when a meeting is a formal discussion, the union must be afforded an opportunity to be represented.

MANAGEMENT RIGHTS:

Under the law, certain "management rights" exist, which may not be abridged, regardless of the contract. 5 USC 7106 reserves the right to:

- ◆ determine the mission, budget, organization, number of employees, and internal security practices of the agency;
- ◆ hire, direct, layoff, and retain employees;
- ◆ suspend, remove, reduce in grade or pay, or discipline employees;
- ◆ assign work, determine need to contract out, and determine the personnel by which operations will be conducted;
- ◆ select and appoint employees from appropriate sources; and
- ◆ take necessary emergency action.

Any decision to act in these areas is a sole prerogative of management.

However, both procedures for exercising that authority and arrangements regarding affected employees are subject to negotiations.

MANAGEMENT UNFAIR LABOR PRACTICES (ULPs):

5 USC 7116(a) states it is an unfair labor practice for management to:

- ◆ interfere with, restrain, or coerce an employee in the exercise of the rights assured by 5 USC Chapter 71;
- ◆ encourage or discourage membership in a labor organization by discrimination with respect to conditions of employment;
- ◆ sponsor, control, or otherwise assist a labor organization;
- ◆ discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under 5 USC Ch. 71;

- ◆ fail to cooperate in impasse procedures;
- ◆ enforce rules or regulations in conflict with a prior collective bargaining agreement.

UNION UNFAIR LABOR PRACTICES:

Under 5 USC 7116(b) it is an unfair labor practice for a union to:

- ◆ interfere with, restrain or coerce an employee in the exercise of his rights assured by 5 USC Chapter 71;
- ◆ attempt to induce management to discriminate against an employee in the exercise of his or her rights under 5 USC Ch. 71;
- ◆ coerce or take an economic sanction against a union member as punishment or for the purpose of hindering work performance or productivity of a Federal employee.;
- ◆ discriminate against an employee with regard to the terms or
- ◆ conditions of membership because of race, color, creed, sex, age, national origin, civil service status, political affiliation, marital status, or handicapping condition;
- ◆ refuse to consult, or negotiate with an agency as required by the 5 USC Chapter 71;
- ◆ fail to cooperate in impasse procedures;
- ◆ call or engage in a strike, work stoppage, or slowdown, or picketing which interferes with an agency's operations.

USE OF OFFICIAL TIME:

Generally, employees representing the bargaining unit are authorized official time to negotiate contracts/MOU's, etc; discuss grievances; training; participate in discussions with management, etc. However, 5 USC 7131 provides that the INTERNAL business of a labor organization shall be conducted during the non-duty hours of the employees concerned (i.e.: solicitation of membership, collection of dues, elections, newsletter production, etc.).



Test answers for situational exercises to follow:
1-D, 2-A, 3-B, 4-A, 5-B, 6-B, 7-A, 8-C, 9-C, and 10-B

**Labor Relations Situational Exercises – Excerpts from the Federal Labor Relations Authority
Select the Best Answer to the Following Questions (answers on the preceding page)**

1. During a campaign by two unions to obtain exclusive recognition, you have come to the conclusion as a high management official of the agency, that one of the unions competing is far superior to the other one. Based on this, you decide to take some action for the good of the agency. Which of the following actions, if any, would be appropriate?

- a. Hold a meeting of all employees and discuss your views.
- b. Write a memo to all employees explaining your views.
- c. Discuss your views with all supervisors subordinate to you and ask them to express those views to their employees.
- d. None of the above.

2. As a high management official, you conclude that it is essential to radically alter the plan for scheduling lunch periods. There is no article in the contract referencing this subject. Which action should you take?

- a. The opportunity to negotiate must be provided to the local union before the new program is implemented.
- b. Since the contract does not address the issue, no negotiation with the union is necessary although it may be good for political reasons.
- c. Although negotiation with the union is not necessary, it is necessary to solicit the views of the employees without the union's intervention.
- d. None of the above.

3. While walking by, you overhear one of your employees, who is a union representative, trying to get three other employees to become union members during duty hours. Which action would be proper?

- a. I would take the "management position" and attempt to talk the three employees out of signing up.
- b. I would tell the representative that he is engaging in internal union business on government time and such discussions are unauthorized.

c. I would do nothing since discussion regarding union membership is protected activity under 5 USC Ch. 71 and to forbid this activity might subject the agency to an unfair labor practice complaint.

4. One of your employees approaches you and asks you to join the local union so you can run for a union office. How would you respond to the request?

- a. I would tell the employee that while I am entitled to join the union. I cannot hold a union office or play a role in the management of the labor organization.
- b. I would tell the employee that, as a supervisor, I can not join the union or hold an office in the organization.
- c. I would accede to the employee's request in the interest of good labor-management relations.

5. How many employees must a person supervise in order to be considered a supervisor for labor relations purposes?

- a. Three
- b. One
- c. No set number is required but, in order to be a supervisor, a person must be at least a Branch Chief.

6. An employee comes to you and indicates that he wishes to file a grievance under the agency grievance procedure. According to the Labor Relations Officer, the subject on which he wishes to file the grievance is covered by the negotiated grievance procedure. The employee tells you he does not want to use the negotiated procedure. What should your reaction be?

- a. That the grievance will be processed under the agency procedure in accordance with his wishes.
- b. That the negotiated procedure is the exclusive procedure available to him and that he must use that procedure.
- c. I would ask the president of the union local if he has any objections to the employee's using the agency procedure.

7. Following a long antagonism between two of your employees that included several shouting matches, a fight breaks out resulting in some broken furniture and minor injuries. After taking action to issue proposed removal notices to the two employees, the union president approaches you with a demand that you negotiate regarding the severity of the penalties. Must you negotiate in this situation?

- a. No, the decision to remove an employee is a sole prerogative of management.
- b. Yes, since this a personnel matter, although I need not agree to any union proposal.
- c. Yes, because the action involves more than one bargaining unit employee.

8. You are the deciding official in a negotiated grievance proceeding in which the employee is representing himself. The union claims it has a right to be present at the adjustment of the grievance. How do you respond to the union?

- a. I would not allow the union to be present, as the employee is representing himself.
- b. I would allow the union to be present only if the employee agreed to have the union serve as his representative in the grievance.
- c. I would allow the union to be present at the adjustment of the grievance.

9. An employee in the bargaining unit whom you supervise indicates his desire to file a religious discrimination grievance using the negotiated procedure. Would you allow the use of this procedure?

- a. No, because this is clearly a complaint which must be handled under the EEO procedure established by law.
- b. Yes, but only after the employee has exhausted his rights under the EEO appeal system.
- c. Yes, so long as EEO appeals are within the scope of the negotiated procedure and the employee has not filed a complaint relating to the same problem under the EEO procedure.

10. An employee under your supervision who has requested a promotion is performing at a level that is, at best, "average" for his current grade. When you call the employee in to tell him what deficiencies exist and how to improve to justify a promotion, the employee insists on union representation. How do you respond?

- a. I would grant the demand since the meeting is a formal discussion.
- b. I would not grant the demand since the meeting is a personal counseling session.
- c. I would grant the demand since the meeting concerns negative factors in the employee's work performance.



WHEN IN DOUBT...CALL YOUR LABOR RELATIONS SPECIALIST IN THE HUMAN RESOURCES OFFICE!!!

Impact & Implementation (I&I) Bargaining Notes:

I & I BARGAINING

(Impact and Implementation Bargaining)

Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the union and, upon request, bargain on procedures that management will follow in implementing its protected decision as well as on appropriate arrangements for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining.

CONDITIONS OF EMPLOYMENT

Under title 5, United States Code, section 7103(a)(14), conditions of employment "means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise [e.g., by custom or practice], affecting working conditions, except that such term does not include policies, practices, and matters--(A) relating to prohibited political activities or classification to the extent such matters are *specifically provided for by Federal statute*.

PROCEDURES

Under title 5, United States Code, section 7106(b)(2), the procedures observed by management in exercising its reserved rights are negotiable. To qualify as a negotiable (b)(2) procedure, the proposed "procedure" must not require the use of standards that, by themselves, directly interfere with management's reserved rights or otherwise have the effect of limiting management's reserved discretion.

APPROPRIATE ARRANGEMENT

One of three exceptions to management's rights. Under title 5, United States Code, section 7106(b)(3), a proposal that interferes with management's rights can nonetheless be negotiable if the proposal constitutes an "arrangement" for employees adversely affected by the exercise of a management right and if the interference with the management right isn't "excessive" (as determined by an excessive interference balancing test).

THREE EXCEPTIONS

The three title 5, United States Code, section 7106(b) exceptions to the above involve (1) title 5, United States Code, section 7106(b)(1) **permissive subjects** of bargaining (e.g., staffing patterns, technology) on which, under the statute, agencies can elect to bargain, (2) **procedures** management will follow in exercising its reserved rights, and (C) **appropriate arrangements** for employees adversely affected by the exercise of management rights.

1. "Permissive" Subjects Exception

This exception to management's rights deals with staffing patterns--i.e., with "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty" and with "the technology, methods, and means of performing work." Under the statute such matters are, moreover, negotiable "at the election of the agency."

2. "Procedural" Exception

Title 5, United States Code, section 7106(b)(2), dealing with procedures, really isn't an exception to management's rights as the Authority has held that a proposed procedure that "directly interferes" with a management right is not a procedure within the meaning of title 5, United States Code, section 7106(b)(2).

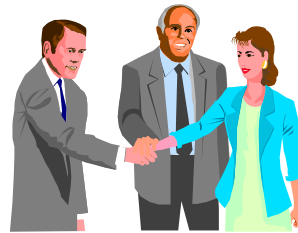
3. Appropriate Arrangement Exception

Title 5, United States Code, section 7106(b)(3) applies only if the proposal is intended to ameliorate the adverse effects of the exercise of a management right. Where such is the intent of the proposal, the Authority applies a balancing test in which it weighs the extent to which the proposal ameliorates the expected adverse effects against the extent to which it interferes with the management right and determines whether or not the specific proposal "excessively" interferes with the management right. If the interference is "excessive," the proposal isn't an appropriate arrangement and therefore is nonnegotiable. If otherwise, the proposal is a negotiable appropriate arrangement, even though it interferes with management's rights.

To qualify as an "arrangement" to which it would be proper to apply the excessive interference balancing test, the proposal has to be "tailored" so that it applies only to those employees who would be adversely affected by the proposed management decision.

The bottom line...

Any time you are contemplating changing conditions of employment, offer the union an opportunity to discuss it ... a short discussion now can save weeks of headaches later, and help build your relationship!



Labor Management Relations What Causes a Grievance???

GENERAL CAUSES

- Labor/Management Relations (reactions between diverse people)
- Self Interest (how will this change affect me)
- Authority Complex (let authority go to the head or conversely reject all authority)
- Communication Barriers (written, spoken and body language)
- Self-Justification (resent having decisions questioned and do everything to justify)
- Gut Reactions (reactions without logic may not address built in biases)
- Union Attitudes (push agendas or have "get management" attitude)

SPECIFIC CAUSES

(Employee/Supervisor/Shop Steward)

Employee:

- Qualifications do not match the job
- Personal problems (refer to EAP)
- Unreliable/Antagonistic employees
- Linguistic/Racial/Cultural barriers
- Union Membership (I am immune to discipline)

Supervisor:

- Wrong attitude toward the Union
- Weak supervisory skills
- Unjust discipline
- Favoritism and Inconsistency
- Promises made to employees
- Failure to eliminate sources of irritation
- Unclear orders/instructions
- Failure to keep workforce informed
- Failure to dispel rumors
- Failure to listen and consider employee's viewpoints
- Incomplete knowledge of the labor contract

Shop Steward:

- Incomplete knowledge of the labor contract
- Making unwarranted promises
- Failure to act on complaints
- Showing favoritism
- Failure to set a good example
- Playing union politics (stir it up and solve it)
- Allowing rumors to circulate



**Labor Relations Hot Item – Conduct Management
Tips on Disciplinary and Adverse Actions**

(Stay out of trouble – DON'T FORGET WEINGARTEN!!!)

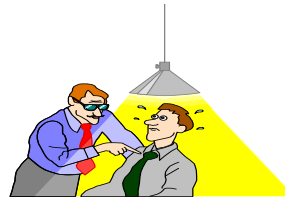
SUPERVISOR'S ROLE

- Ensure workers know expected behavior
- Ensure they know consequences of unacceptable behavior
- Respond to ALL cases; bring to employee's attention immediately – apply consistent standards
- Offer help through the Employee Assistance Program
- Remove names/personalities to minimize bias; focus on problems - not the person
- Initiates all disciplinary and adverse actions

SUPERVISORS MUST

- **ALWAYS** contact the Human Resources Office prior to issuing proposed disciplinary or adverse actions
- Receive Human Resources Office approval prior to issuing original decisions on disciplinary or adverse actions
- Review proposed penalty with the deciding official
- Use the templates provided by Human Resources as guidelines for disciplinary or adverse actions

Good Practice – Involve the union and offer representation whenever discipline is contemplated – If the employee declines union representation...GET IT IN WRITING!



Introduction to the Labor / Management Partnership Concept

In response to the call to reinvent government, relationships between labor and management are changing. Across the Federal Government, labor and management are forming partnerships. By acknowledging their mutual interests and objectives, many former adversaries now work together as a united team with a common purpose and vision.

In prior years, traditional negotiation techniques were used to reach collective bargaining agreements and resolve workplace disputes. Union and management entered into talks with established, firmly held positions on issues, submitted inflated proposals, and argued vigorously. The parties exaggerated the importance of each proposal and demanded significant concessions by the other part in exchange for dropping inflated or unimportant proposals. Discussions focused on personalities and anecdotal data rather than issues. The net result of these tactics was a labor-management relationship built on acrimony, distrust, confrontation, and, worst of all, giving up control of the results of their negotiation through the agreement were usually addressed through grievance procedures or unfair labor practice (ULP) charges using the same behaviors learned while bargaining. A third party, such as an Arbitrator or the FLRA, would decide for you!

The Federal Government and its unions have recognized the value of partnership and are working together to create partnerships at all levels of government. In its September 1993 report, "Creating a Government that works Better and Costs Less," the National Performance Review (NPR) recommended the formation of "labor-management partnerships for success" across the government. In October 1993, Executive Order 12871 created the National Partnership Council, a team of senior union, neutral and management leaders charged with encouraging labor-management cooperation and partnership. The Council also promotes the formation of labor-management partnerships.

The Executive Order's preamble begins:

The involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's objective. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

The National Partnership Council cited five principles as the basis for the recommendation:

1. The Federal workforce is valued as a full partner in substantive as well as procedural decision-making. This means that unions and agencies work together as partners to transform the way organizations are structured, work is performed, and services are delivered.
2. Problems are identified and resolved through consensual rather than adversarial methods.

3. Collective bargaining promotes the public interest. It promotes partners' ability to deliver high-value goods and services to the public and fosters Federal organizations' shared values through innovative approaches.
4. Dispute resolution processes should be fair, simple, determinative, fast, and inexpensive.
5. Union effectiveness is one of the cornerstones of the productive workplace partnership.

Does Partnership Replace the Contract?

A partnership or partnership agreement should not replace the Labor / Management Agreement (contract), rather it should complement it. The Council strongly encourages labor and management to continue to bargain in good faith, as required by law. A successful partnership will increase efficiency by speeding up the traditional labor / management processes, with the contract always there as the firm foundation of a good relationship.

Make the Partnership Work

Time, patience, and trust are essential to making a partnership work. Here is an example of a specific approach useful in achieving a successful partnership.

Consensus Decision making

Partnerships arrive at the most acceptable solutions to problems by including the input and support of the entire group through consensus decision-making. This method leads to an improved level of quality in and acceptability of the decision.

Consensus is reached when all members agree upon a single alternative, and each group member can honestly say:

"I believe that you understand my point of view and that I understand yours. Whether or not I prefer this decision, I support it because it was reached openly and fairly, and it is the best solution for us at this time."

Though the consensus solution may not be everyone's first choice, it is acceptable and understandable to everyone.

Tips for Reaching Consensus



- Listen and encourage participation -pay attention to others
- Share information
- Don't agree too quickly
- Don't bargain, trade support, or vote
- Create solutions that can be supported
- Avoid arguing blindly for your own views
- Seek a win -win solution
- Treat differences as strengths

I. Employee Rights

- ❖ Form, join, or assist a labor organization.
- ❖ Not form, join, or assist a labor organization.
- ❖ Act as a representative for labor organization.
 - Shop Steward or Chief Steward
 - Local President
 - Regional or National Representative
- ❖ As representative, present views of labor organization to Agency head, other Officials of Executive Branch, or Congress.
- ❖ Bargain collectively through labor organization with respect to conditions of employment.
- ❖ Exercise these rights without fear of penalty or reprisal from Agency Management.

II. Bargaining Unit

A. Definition

A group of employees who have a common interest, and are represented by a labor organization in their dealings with Agency management.

B. Exclusions

- ❖ Supervisors
- ❖ Management officials
- ❖ Confidential employees
- ❖ Professional employees, unless a majority of professional employees vote for inclusion in the unit.
- ❖ Employees engaged in:
 - ❖ Personnel work in other than a purely clerical capacity
 - ❖ Investigators directly affecting an agency's internal security
 - ❖ Administering the provisions of Title 5, Chapter 71
 - ❖ Work that directly affects national security

C. Definition of Supervisor

A person who has the authority to take, or effectively recommend taking, any of the following actions with respect to at least *one* employee:

- | | |
|--------------|---------------------|
| ❖ Hire | ❖ Transfer |
| ❖ Layoff | ❖ Adjust Grievances |
| ❖ Promote | ❖ Suspend |
| ❖ Remove | ❖ Assign |
| ❖ Recall | ❖ Furlough |
| ❖ Direct | ❖ Reward |
| ❖ Discipline | |

III. Union Rights and Responsibilities

A. Rights

- ❖ Exclusive representative of employees in bargaining unit and entitled to act for and negotiate collective bargaining agreements for all employees in the unit.
- ❖ Be given the opportunity to be represented at any formal discussion.
- ❖ Be given the opportunity to be represented at any meeting with unit employees in connection with an investigation if the employee reasonably believes the meeting could result in disciplinary action and the employee requests union representation. (Weingarten Discussions)
- ❖ Be given the advance notice of any proposed changes to established conditions of employment and an opportunity to negotiate over these proposed changes absent any clear and unmistakable waiver of this right.

B. Responsibilities

- ❖ Represent interests of all bargaining unit members, regardless of union membership.
- ❖ Negotiate with management in a “good faith” effort to determine conditions of employment.

IV. Official Time

A. Definition

Duty time that is granted to union representatives to perform union representational functions, without charge to leave or loss of pay, when the employee would otherwise be in a duty status. Time is considered to be hours of work.

B. When is official time permitted?

It can be permitted for representational functions such as:

- ❖ Contract or mid-term negotiations
- ❖ Representing employees who file grievances
- ❖ Any proceeding before the Federal Labor Relations Authority
- ❖ For any employee representing an exclusive representative or any employee represented by an exclusive representative in any amount the agency and the exclusive representative agree to be reasonable, necessary, and in the public interest

It is not permitted for conducting union’s internal business, such as:

- ❖ Soliciting membership
- ❖ Collecting union dues
- ❖ Any matters relating to internal management and structure of union

Overtime for official time is not permitted because:

- ❖ Representation is for the union and it is not for the primary benefit of the government as an employer
- ❖ Time spent performing representational business outside an employee’s normal workday is not considered the performance of hours of work

within meaning of 5 USC §§ 5542 – 5544, the Fair Labor Standards Act, and 5 CFR 551.104 and 551.424

- ❖ Exception to overtime prohibition provides overtime on official time if the employee/representative is already on overtime duty status

V. Furnish Information

Right to Information

Agency is obligated to furnish to the exclusive representative, upon request and, to the extent not prohibited by law, data -

- ❖ which is normally maintained by the agency in the regular course of business;
- ❖ which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining; and
- ❖ which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors,
- ❖ relating to collective bargaining....

Unlike Freedom of Information Act (FOIA) requests, information must be provided free of charge.

If you receive a request for information from a union representative, contact your Labor Relations Specialist immediately.

VI. Formal Discussion

A. Definition

Discussion between one or more representatives of the Agency and one or more employees in the unit concerning any grievance or any personnel policy or practice or other general condition of employment.

B. Criteria (See 10 FLRA No. 24 (1982), See also 52 FLRA No. 17 (1996))

- ❖ Whether the individual who held the discussion is merely a first-level supervisor, or is higher in the management hierarchy;
- ❖ Whether any other management representative attended;
- ❖ Where the meeting took place;
- ❖ How long the meeting lasted;
- ❖ How the meetings were called (i.e., with formal advance written notice, or more spontaneously and informally);
- ❖ Whether a formal agenda was established for the meeting;
- ❖ Whether the employee's attendance is mandatory; or
- ❖ The manner in which the meetings were conducted (i.e., whether the employee's identity and comments were noted and transcribed).

C. What is a discussion?

The term "discussion" in the Statute is synonymous with "meeting and no actual discussion or dialogue need occur for the meeting to constitute a formal discussion within the meaning of the Statute. See 37 FLRA No. 60 (1990).

D. Union's Role.

- ❖ The opportunity to be represented at a formal discussion means more than merely the right to be present. The right to be represented also means the right of the union representative to comment, speak and make statements. See 47 FLRA No. 11 (1993).
 - On the other hand, this right does not entitle a union representative to take charge of, usurp, or disrupt the meeting. See 38 FLRA No. 61 (1990).
 - Comments by a union representative must be governed by a rule of reasonableness, which requires the respect for orderly procedures. See 47 FLRA No. 11 (1993).

E. Discussions That Are Not Formal

Work assignments; Progress reviews; Performance appraisals; Performance counseling; Counseling on conduct.

F. Discharging Obligation

- ❖ Give union reasonable advance notice of meeting (time, date, place, and subject to be discussed).
- ❖ Provide union opportunity to attend.

G. Questions and Answers

- ❖ **Q:** If an employee approaches me and asks a question about work rules or personnel practices, is this formal discussion or meeting?
 - **A:** Under normal circumstances it is not. Since the employee initiated the conversation in an informal setting, the supervisor is free to respond to the employee's question. However, if, during the conversation, the supervisor establishes or changes general personnel practices or work rules the meeting or discussion could be considered formal. In addition, any discussion you have with the employee concerning a grievance he or she may have filed is a formal meeting.
- ❖ **Q:** Suppose I want to call an employee's attention to an existing work procedure—is that a formal meeting or discussion?
 - **A:** The discussion of work procedures, assignments, or performances is normally not a formal meeting or discussion under the law. Nor is counseling an employee regarding individual performance. For example, reminding an employee to wear safety equipment is not a formal meeting or discussion under the law.
- ❖ **Q:** I have decided to hold a formal meeting or discussion. What happens next?
 - **A:** Contact your Labor Relations Specialist to find out the method of inviting the union as well as the appropriate union official to be invited. Having learned that, then an invitation should be extended to the union. .

- ❖ **Q:** If I plan to hold a formal discussion or meeting with employees, do I have to tell the employee that he or she has a right to union representation?
 - **A:** Your obligation is to tell the union of the scheduled meeting or discussion and give the union the opportunity to be present. You do not have to tell the employee of the union's right to attend.
- ❖ **Q:** If the employee does not want a union representative at a formal discussion or meeting but the union demands to be present, do I allow the union representative in the meeting or discussion?
 - **A:** Yes. Since the employee does not want to be represented by the union the union representative is representing the interests of the bargaining unit.

VII. Investigative Meeting/Weingarten

A. Definition

A union must be given the opportunity to be represented at an examination of a unit employee by an agency representative in connection with an investigation, if:

- ❖ The employee reasonably believes the examination may result in disciplinary action; and
- ❖ The employee requests representation.

B. Management's Obligations

In all cases where the employee requests union representation, contact your Labor Relations Specialist for guidance and assistance. Some possible options would include:

- ❖ Stop discussion; continue investigation by other means, which do not involve interviewing bargaining unit employees.
- ❖ Temporarily stop meeting to allow union representative to attend.

C. Union's Role

- ❖ Ask relevant questions.
- ❖ Assist employee to answer.
- ❖ Cannot answer questions, break up meeting, or prevent Agency from carrying out investigation.

D. Questions and Answers

- ❖ **Q:** Does the interview or examination have to occur in connection with a formal investigation?
 - **A:** No, an "investigation" occurs even when a supervisor seeks information to determine whether discipline should be taken against an employee. For example, an employee is suspected of being late for work, and the supervisor calls him or her into the office to determine if that is the case and, if so, why.

- ❖ **Q:** If I choose to conduct the investigatory interview with a union representative present, to what extent must I allow the union representative to participate in the interview?
 - **A:** The Supreme Court has said that the:
 - Purpose of the union representative is to assist the employee by clarifying facts or bringing out favorable information.
 - Employer may insist on hearing the employee's account of the incident.
 - Employer need not permit an argument to develop with the union representative.
 - Employer has no duty to bargain with the union representative.
- ❖ **Q:** Does this mean that I can force the union to be quiet during the interview?
 - **A:** Absolutely not. Although you may insist that the employee, not the union representative, answer your questions, you must allow the union representative an opportunity to clarify facts or bring out favorable information.
- ❖ **Q:** What do I do if the union representative becomes so argumentative as to completely disrupt the interview process?
 - **A:** Warn the union representative and employee that if union representative continues to disrupt the meeting, you will be forced to end the interview and make your disciplinary decision on the basis of other information (without the benefit of the employee's input).

VIII. Management Rights

A. 5 U.S.C. § 7106(a) reserves to Management the right to:

- ❖ Determine the Agency's mission, budget, organization, number of employees, and internal security practices;
- ❖ Hire, assign, direct, lay off, and retain employees;
- ❖ Suspend, remove, reduce in grade or pay, or discipline employees;
- ❖ Assign work, make determinations with respect to contracting out, and determine the personnel by which operations will be conducted;
- ❖ Select and appoint employees from appropriate sources; and
- ❖ Take whatever actions may be necessary to carry out the Agency mission during emergencies.

B. Decisions to act in these areas are management's prerogative and the union cannot negotiate on any of these rights. However, procedures for the exercise of these rights and arrangements that affect employees may be subject to negotiation.

C. Subject to Executive Order 12871, 5 U.S.C. § 7106(b)(1) are "permissive" rights that Management may elect (management's option) to negotiate over:

- ❖ Numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty.

- ❖ Numbers of employees is defined as the amount of employees or positions assigned to a particular subdivision, work project or tour of duty.
- ❖ Types of employees is defined as employees or positions that are assigned to perform work in a particular subdivision, work project or tour of duty.
- ❖ Grades of employees are related to types of employees. While the FLRA has not specifically defined “grades,” it usually concerns employees or positions at already established grade levels that are assigned to perform work in a particular subdivision, work project or tour of duty. However, union cannot negotiate on classification of positions or organizational structure.
- ❖ Organizational subdivision is defined as an organizational part or segment.
- ❖ Tour of Duty is defined as hours of the day and days of the administrative workweek an employee is regularly scheduled to work.
- ❖ Work Project is defined as a particular job or task.
- ❖ The technology, methods, and means of performing work are;
 - Technology is defined as the technical method used in accomplishing or furthering the performance of the agency’s work.
 - Method is defined as the way in which an agency performs its work (how).
 - Means is defined as any instrumentality including any agent, tool, device, measure, plan or policy used by the agency for accomplishing or furthering the performance of its work.

IX. Making Changes In Conditions of Employment

A. Management’s Role

When management wants to make a change that affects conditions of employment of bargaining unit employees, the union must be given **reasonable advance notice** of the proposed change. Normally, your collective bargaining agreement will outline how much, if any, specific advance notice is required with your union when making changes that affect conditions of employment of bargaining unit employees.

B. Recognition of Obligation

- ❖ Does the decision produce a change or will the decision continue to use an existing way of doing things?
- ❖ Does the change affect bargaining unit employees?
- ❖ Does the change affect conditions of employment?
- ❖ Is the change significant?

X. Contract Administration

A. Definition

How the terms of the labor agreement will be interpreted, applied, and enforced.

B. Collective Bargaining Agreement

- ❖ Document that establishes the framework for labor-management relations.
- ❖ Contains those working conditions mutually agreed to by union and management.

C. Contract Interpretation Principles

- ❖ Administer agreement consistently with the intent of the parties whom negotiated the agreement.
- ❖ Language of agreement
- ❖ Bargaining history
- ❖ Past practice
- ❖ Concern condition of employment
- ❖ Clear and consistent
- ❖ Long standing
- ❖ Accepted by both parties
- ❖ Not contrary to law, regulation, collective bargaining agreement

D. The Union Steward

The union steward is an employee who serves as a representative of the union at a specific worksite. The stewards may be elected by union members or appointed by officers of the union.

The steward's duties are of two kinds:

1. Representing the union and bargaining unit employees in dealing with management. These are called representational activities and include handling grievances, policing the contract, keeping employees informed of working condition changes, and meeting with management. Stewards may be granted official time, without charge to leave, for these representational activities. The amount of time granted is negotiable.
2. Conducting internal union business such as participating in elections of union officials, soliciting membership, collecting dues and attending union meetings. The use of official time for conducting internal union business is prohibited by Title V. Such activities can only be done on non-duty time.
 - ❖ For representational activities, management should recognize that fellow union members place the steward in a position of trust and should accord the steward the cooperation and respect necessary in order for the steward to do an effective job.
 - ❖ Since stewards are responsible for representing the union and all bargaining unit employees, it is important that they have enough time to carry out representational responsibilities and have access to bargaining unit employees. At the same time, the steward, as an employee, is responsible for performing the assigned duties of his or her position. The goal in specifying a steward's activities in the contract should be to balance the steward's responsibility for representing the union and bargaining unit employees with management's primary responsibility for mission accomplishment.

E. The Supervisor-Steward Relationship

Supervisors and stewards play an extremely important role in determining whether the labor-management relationship is a good or bad one. On a day-to-day basis, it is the supervisor who has primary responsibility for administering the contract and the steward whom has primary responsibility for policing the administration. The supervisor and the steward:

- ❖ Must know the agency's personnel policies, regulations, and the contract.
- ❖ Must understand and accept each other's role.
- ❖ Are under pressure from both sides and must try to resolve problems without violating the contract or going beyond the intent of labor-management policies.

XI. Negotiated Grievance Procedure

A. Definition

Grievance means any complaint:...

- ❖ By any employee concerning any matter relating to the employment of the employee;
- ❖ By any labor organization concerning any matter relating to the employment of the employee;
- ❖ By any employee, labor organization, or agency concerning the effect of interpretation or a claim of breach of a collective bargaining agreement; or
- ❖ Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. Exclusions

- ❖ Any claimed violation of 5 U.S.C. § 7321 (relating to prohibited political activities);
- ❖ Retirement, life insurance, or health insurance;
- ❖ A suspension or removal under 5 U.S.C. § 7532 (national security);
- ❖ Any examination, certification, or appointment; or
- ❖ Classification of any position that does not result in the reduction in grade or pay of an employee.

C. Procedures

- ❖ Assure union right to present and process grievances on behalf of itself or any unit employees;
- ❖ Assure an employee the right to present grievances on his/her behalf, and assure the union the right to be present during the grievance process;
- ❖ Provide for final and binding arbitration; and
- ❖ Provide for settlement of questions of arbitrability.

D. Grievance Handling

- ❖ Before meeting
 - Inform union
 - Ensure privacy
- ❖ Set the tone - questions only
 - What's the problem?
 - What are the facts?
 - Who? What? When? Where? Why?
 - What (exactly) do you want?
 - Why are you entitled to that?
 - Where in the Contract/Law/Regulation does it say that?
- ❖ Offer no resolutions at the meeting
- ❖ Investigate
 - Check the facts.
 - Check the Contract/Laws/Regulations
 - What have other grievance decisions said?
 - What have arbitrators said?
 - Is it a "true" practice?
 - What does management want to do?
 - What will it cost to fight?
- ❖ Make a timely decision (contract timeframe for grievance response)
- ❖ Be wary of partial relief.
- ❖ Is it grievable?
- ❖ If you agree to settle the grievance, grievance must be dropped.
- ❖ Things to avoid
 - Little or no research
 - Rubber-stamping
 - Personality clashes and power struggles
 - Giving the farm away to make the grievance disappear.

E. The Steward's Role in Processing a Grievance.

- ❖ One of the steward's most important roles is to handle grievances.
- ❖ Although the supervisor exercises certain authority over the stewards as an employee, when the supervisor and the steward discuss grievances, the steward acts as an official representative of the union.
- ❖ Stewards are trained, as are supervisors, to settle a grievance as close to the source of the dispute as is possible. Like supervisors, they have to live with any settlement reached. If they can arrive at a settlement, rather than having one imposed, both parties benefit.
- ❖ In handling grievances, stewards win or lose cases based on how carefully they have investigated the problem. This investigation may involve conducting interviews, determining pertinent dates, and getting names of witnesses. Stewards must ask questions for clarification, examine records, distinguish between fact and opinion, and decide what is relevant to the complaint. They also have to assure themselves that the grievance is legitimate.
- ❖ When a steward receives a case, he or she should determine whether a basis for the grievance exists. They should investigate to see if:
 - The contract has been violated.
 - The law has been violated.

- Government-wide rules and regulations have been violated.
- Agency regulations have been violated.
- Past practices have been changed.
- Employees are being treated unfairly.
- ❖ Just as stewards determine whether bargaining unit employees have legitimate grievances, supervisors should analyze any grievance received to determine whether there has been a violation of contract, law, regulation, past practice, or unfair employee treatment. If an employee files a grievance, contact your Labor Relations Specialist for assistance.

XII. Unfair Labor Practice (ULP)

A. Definition

- ❖ An alleged violation of a right protected by the Federal Service Labor-Management Relations Statute (5 U.S.C. Chapter 71)
- ❖ A ULP can be filed by an employee, the union or management.

B. Agency ULP Charges

- ❖ Section 7116(a)(1)
 - “Management shall not interfere with, restrain or coerce any employee in the exercise of its rights under the Statute.”
 - Threatening employees with reprisal
 - Interrogating unit employees on union activity
- ❖ Section 7116(a)(2)
 - “Management shall not encourage or discourage membership in a labor organization by discrimination in connection with hiring, tenure, promotion or other conditions of employment.”
 - Failure to promote because of union activities
 - Discipline in retaliation for activity as a union representative
- ❖ Section 7116(a)(3)
 - “Management shall not sponsor, control, or otherwise assist a labor organization....”
 - Campaigning for a specific individual
 - Help union organize membership drive
- ❖ Section 7116(a)(4)
 - “Management cannot discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or given any information or testimony....”
 - Transfer employee to undesirable job because he/she filed a ULP
- ❖ Section 7116(a)(5)
 - “Agency management shall not refuse to consult or negotiate in good faith with a labor organization....”
 - Implement change in condition of employment without notifying union
 - Bypass union (directly notify employees of a change without union present)
 - Unilaterally change established past practice, absent a clear and unmistakable waiver of bargaining rights

- Refusal to bargain
- ❖ Section 7116(a)(6)
 - “Failing or refusing to cooperate in impasse procedure and impasse decisions....”
 - Refuse to provide the union official time for attendance at Impasse Panel hearing
- ❖ Section 7116(a)(7)
 - “An agency cannot enforce any rule or regulation (other than a rule or regulation implementing Section 2302 of Title V) which is in conflict with any applicable collective agreement if the agreement was in effect before the date the rule or regulation was prescribed.”
- ❖ Section 7116(a)(8)
 - “To otherwise fail or refuse to comply with any provision of the Statute....”
 - Formal discussion
 - Weingarten meeting
 - Duty to supply information

C. Union ULP Charges

- ❖ Section 7116(b)(1)
 - “A labor organization shall not interfere with, restrain or coerce any employee in the exercise by the employee of any right under this chapter.”
 - Expelling a member from the union for filing ULP against union.
 - Suggesting to employees that they must become dues paying members in order to receive union representation.
- ❖ Section 7116(b)(2)
 - “A labor organization shall not cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter.”
 - Encourage agency to discipline employee due to anti-union activities.
- ❖ Section 7116(b)(3)
 - “A labor organization shall not coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member’s work performance or productivity as an employee or the discharge of the member’s duties as an employee”
 - Fining union members for violating an internal union policy concerning acceptance of overtime work as an agency employee.
- ❖ Section 7116(b)(4)
 - “A labor organization shall not discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition.”

- Refuse to represent an employee due to race, color, creed....
- ❖ Section 7116(b)(5)
 - “A labor organization shall not refuse to consult or negotiate in good faith with a an agency....”
 - Failure to send representatives to negotiating table who have the authority to commit union.
- ❖ Section 7116(b)(6)
 - “Failing or refusing to cooperate in impasse procedure and impasse decisions....”
 - Refuse to meet with mediator on issues at impasse.
- ❖ Section 7116(b)(7)
 - “(A) To call, or participate in a strike, work stoppage, or slow-down, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency’s operations, or
 - (B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or
- ❖ Section 7116(b)(8)
 - “To otherwise fail or refuse to comply with any provision of the Statute....”Use of official time for internal union business.

D. Questions and Answers

- ❖ **Q:** What is the relationship between grievances and ULPs?
 - **A:** There is a very close relationship because both actions stem from disagreements, which arise from the three-way relationship that exists among employees, the union, and management.
- ❖ **Q:** Is there a difference between grievances and ULPs?
 - **A:** Yes, the differences relate mainly to the nature of the disagreement between the parties and the resolution procedure used to resolve the disagreement. Grievances relate to disagreements over the interpretation and application of a collective bargaining agreement between union or management or agency personnel regulations and are decided by an arbitrator. ULPs related to disagreements over the coverage and meaning of the labor law and are decided by the FLRA.
- ❖ **Q:** Can a violation of a collective bargaining agreement ever be a ULP?
 - **A:** Yes, it can, but only under the most extraordinary of circumstances. One of the parties to the agreement must knowingly, deliberately, and willfully violate the agreement. For example, a ULP occurred in a case where one of the parties to the labor agreement announced that the agreement was no longer in effect (even though it was) and that grievances would not be processed. However, given the federal law’s broad definition of a grievance, a ULP can be filed as a grievance, if the employee or union chooses.
- ❖ **Q:** When may a ULP be filed?
 - **A:** A ULP may be filed anytime within 6 months of the date the injured party became aware of the violation of the labor law.

- ❖ **Q:** Who determines if a ULP has been committed and how is this done?
 - **A:** The FLRA decides ULPs and its process for determining if a ULP has been committed is divided into two phases.
 - The first is the charge phase. During this phase, a representative of one of the regional offices of the general counsel of the FLRA independently investigates the matter to see if there are sufficient grounds to issue a complaint.
 - If sufficient evidence does not exist then the FLRA regional office will dismiss the charges and drop the matter. The regional director's decision to drop the matter is subject to review by the FLRA general counsel. Decisions of the regional directors, however, are upheld in the overwhelming majority of cases.
 - If the regional office finds that sufficient evidence does exist to require a complete investigation, a formal complaint is issued and a hearing is scheduled. The purpose of the hearing is to develop facts sufficient for the FLRA to determine whether an unfair labor practice has, indeed, been committed.
- ❖ **Q:** What happens if the agency is found guilty of committing a ULP?
 - **A:** The FLRA may prescribe whatever remedy is necessary to correct the ULP. This may include revoking the management action that caused the ULP in the first place, and requiring management to go back to the situation, as it existed before the ULP. Generally, however, the remedy consists of requiring the guilty party to sign and post a notice to employees which indicates that it will stop committing the ULP and that it will not take such actions in the future.

E. Free Speech!!!

- ❖ **Q:** The union is forever criticizing me but I'm never allowed to respond, because my response would be a ULP, right?
 - **A:** This is not quite true. As a legal matter, 5 U.S.C., Chapter 71, does allow freedom of expression for supervisors. Such expression, however, must not threaten to interfere with employee rights regarding union activity, membership, or representation; for example, any statement you make that may have a "chilling" effect upon an employee in the exercise of his or her rights may be a ULP. However, agency management may, in some instances, "correct the record" if erroneous or misleading union comments are made. In this regard, whether or not a manager's statement is a ULP often depends in the particular circumstances surrounding the incident. The best advice we can give is to call the your Labor Relations Specialist for advice before you say anything! This may be hard to do in the heat an argument but...

XIII. Labor-Management Cooperation

Executive Order 12871 as amended by Executive Orders 12974, 12983, 13062 and 13138

- ❖ Involvement of employees and their union representatives is essential to achieving the National Performance Review's Government Reform objectives;
- ❖ Employees and their union representatives are "full partners" with management in identifying problems and crafting solutions to better serve the agency's customers and mission;
- ❖ Management may negotiate over "permissive" subjects set forth in 5 U.S.C. 7106(b)(1) (see page 14).
- ❖ In addition to negotiations using traditional methods, the parties have the option of resolving matters through partnership processes, which normally involve the use of an interest-based negotiation process.
- ❖ Listed below are the "Partnership" Executive Order, an example of an Interest-Based Problem Solving Process, and a comparison between Interest-Based and Traditional Negotiations.

INTEREST-BASED PROBLEM SOLVING

BASICS OF INTEREST-BASED PROBLEM-SOLVING

- ❖ **ISSUE** - a subject of discussion or negotiation; the *what*; the problem to be solved
- ❖ **INTEREST** - one party's concern, need, or desire behind an issue; *why* the issue is being raised (mutual or separate)
- ❖ **POSITION** - one party's proposed solution to an issue; the *how*

DEFINE ISSUE CLEARLY

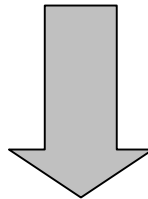
An issue is a subject under discussion or negotiation. The first step in interest-based problem solving is to understand clearly what the issue or problem really is.

INTERESTS REVEAL THE FULL DIMENSIONS OF THE ISSUE

- ❖ An interest is a party's concern or need behind the issue. It expresses why constituents care, the reason for raising the issue for discussion or negotiation. When all of the interests of both parties are brought together, they provide the full scope and dimension of the issue to be resolved.
- ❖ When union and management interests are placed side by side, the team frequently discovers that several interests are held in common. These are mutual interests.
- ❖ Many interests are held by one party only. These separate interests can often be met without interfering with the other party's interests. Separate interests are not always opposing interests.

A POSITION REFLECTS ONE PARTY'S DEMAND

A position is one party's proposed solution to an issue. Stated up front, it expresses what one party wishes.



Labor-Management Cooperation – Don't Bargain Over Positions!!!		
Problem		Solution
Positional Bargaining: Which game should you play?		
Soft	Hard	Principled
Participants are friends.	Participants are adversaries.	Participants are problem solvers.
The goal is agreement.	The goal is victory.	The goal is wise outcome reached efficiently and amicably.
Make concessions to cultivate the relationship.	Demand concessions as a condition of the relationship.	Separate the people from the problem.
Be soft on the people and the problem.	Be hard on the problem and the people.	Be soft on the people, hard on the problem.
Trust others.	Distrust others.	Proceed independent of trust.
Change your position easily.	Dig in on your position	Focus on interests, not positions.
Make offers.	Make threats.	Explore interests.
Disclose your bottom line.	Mislead as to your bottom line.	Avoid having a bottom line.
Accept one-sided losses to reach agreement.	Demand one-sided gains as the price of agreement.	Invent options for mutual gain.
Search for the single answer; the one <i>they</i> will accept.	Search for the single answer; the one <i>you</i> will accept.	Develop multiple options to choose from; decide later.
Insist on agreement.	Insist on your position.	Insist on using objective criteria.
Try to avoid a contest of will.	Try to win a contest of will.	Try to reach a result based on standards independent of will.
Yield to pressure.	Apply pressure.	Reason and be open to reasons; yield to principle, not pressure.



Preparing for Arbitration...

When Preparing for an Arbitration Hearing – What About Interviewing Bargaining Unit Members?

Two key phrases that an agency representative needs to be familiar with when contemplating interviewing bargaining unit members for an arbitration are “Formal Discussions,” and “Brookhaven Warnings.”

What is the Significance of a “Formal Discussion?”

When management is interviewing a bargaining unit employee in preparation for an arbitration hearing, the interview may be considered a “formal discussion” if the requirements of formality as set forth in FLRA case law exist. ***If the interview is considered a formal discussion, the union must be notified and provided an opportunity to be present during the employee’s interview.*** *Department of the Air Force, F.E. Warren Air Force Base, Cheyenne, Wyoming*, 31 FLRA 541 (1988).

Where Does the Requirement to Notify the Union Regarding Formal Discussions Come From?

The FLMRS at 5 U.S.C. § 7114(a)(2)(A) states:

“An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.”

Holding a formal discussion without notifying the Union is therefore an unfair labor practice.

What are the Indicators of a “Formal Discussion?”

In determining whether or not a formal discussion was held, the FLRA looks to the “totality of the circumstances.” *Dept. of Labor, Office of the Assistant Secretary for Admin. And Management, Chicago, Illinois*, 32 FLRA 465, 470 (1988).

Some of these “circumstances” that indicate a formal discussion has taken place include:

1. Whether the individual who held the discussion is a first-level supervisor or a more senior management official.
2. Whether any other management representatives attended;
3. Where the individual meeting took place (i.e. in the supervisor’s office, in the break room, etc.);
4. The length of the meeting;
5. Was the meeting scheduled in advance, or was it informal or unplanned;
6. Was a formal agenda developed for the meeting;
7. Was attendance at the meeting mandatory for the bargaining unit member/members;
8. Were comments at the meeting formally recorded or transcribed, etc.

Bottom line: An interview may be a formal discussion if the requirements of formality are met. If the interview is a formal discussion, the union must be notified and provided an opportunity to be present during the employee’

What are “Brookhaven” Warnings?

Even if the Union is notified that an Agency representative is going to interview a bargaining unit employee for an upcoming arbitration, and a Union representative attends this interview, this does NOT mean that “anything goes” as far as the manner of questioning. What the Agency may consider an “interview” from the Union perspective may be considered an “interrogation.” The interview of the bargaining unit member should be voluntary and non-coercive. *Brookhaven* warnings are designed to minimize the potentially coercive impact of an Agency interview with an employee. The warnings (or advisements) come from *Internal Revenue Service and Brookhaven Service Center and NTEU and NTEU Chapter 99*, 9 FLRA 930 (1982).

To insure that no coercion takes place in an interview, the following warning must be given prior to the interview:

1. **Inform an employee who is to be questioned of the purpose of the questioning**
2. **Assure the employee that no reprisal will take place if he or she refuses and obtains the employee’s participation on a voluntary basis**
3. **Any questioning must take place in a context that is not coercive**
4. **Any questions must not exceed the legitimate scope of inquiry or otherwise interfere with an employee’s statutory rights**

What if Brookhaven Warnings Were Not Given?

The failure to provide the *Brookhaven* warnings is not a *per se* ULP. The FLRA will determine whether the circumstances in which the interviews occur are coercive instead of simply determining whether the Brookhaven assurances were given. *Department of the Air Force, F.E. Warren Air Force Base, Cheyenne, Wyoming*, 31 FLRA 541 (1988). In one case the Air Force was held to have violated 5 U.S.C. section 7116(a)(1) by coercively questioning a union witness concerning matters known to be at issue in an upcoming arbitration hearing. *U.S. Department of the Air Force, Ogden Air Logistics Center, Hill AFB, Utah*, 36 FLRA 748 (1990). Bottom line: Providing *Brookhaven* warnings avoid the issue and is the proper way to proceed.

PREPARING FOR ARBITRATION

How Should I Conduct Research for the Arbitration?

Although more information is provided below regarding specific subject-matter arbitrations, here is some general guidance on conducting research:

- a. Use technical representatives (i.e., labor specialist, personnelist, finance, etc.).
- b. Review applicable provisions of collective bargaining agreement.
- c. Review applicable laws, rules and regulations.
- d. Review applicable FLRA case law.
- e. Review published arbitration awards. Arbitration awards are published in services such as the following:
 - 1) Federal Labor Relations Reporter
 - 2) Labor Arbitration Reports (BNA)
 - 3) Labor Arbitration Awards (CCH)
 - 4) Government Employment Relations Report GERR (BNA)

How Do I Know What the Exact Issue Will Be at the Arbitration?

Most contracts require parties to submit issues to arbitrator in advance, although this is not always the case. If there are not provisions in the CBA regarding submitting a statement of the proposed issue in advance of the arbitration, then the arbitrator will ask for a proposed statement of the issue at the arbitration. This method sometimes has the disadvantage of causing confusion regarding what evidence and/or witnesses should be lined up in advance of the arbitration. However, by reviewing the grievance history and talking to the Union, it is usually possible to anticipate most relevant issues in advance.

Submitting the issue to the arbitrator defines the issue in dispute between the parties and helps ensure that the arbitrator limits his/her decision specifically to that issue. The agreed upon issue puts limits on the arbitrator's authority in the dispute. If the parties cannot agree on the issue, the arbitrator decides what issue(s) are before him/her based on the submissions of the parties. Although this should be obvious, attempt to frame the issue in a manner that is favorable to your client. Have a good knowledge of the grievance history - this should help narrow the issue.

What About Stipulations of Fact?

Stipulations of fact can be used in arbitrations, and can help speed up the arbitration and focus the process on the actual matters in contention.

a. When to Use

- (1) The essence of a stipulation is that the parties agree as to essential fact(s).
- (2) Stipulation used as a substitute for presenting actual evidence.
- (3) Stipulation becomes evidence of issue agreed to.
- (4) Stipulation may be used to avoid bringing witnesses if there is no dispute as to the stipulated testimony.
- (5) Stipulation can be used to avoid lengthy production of evidence.
- (6) Stipulation can be used if you want to avoid calling a particular witness because of their demeanor, attitude, etc.

b. When Not To Use

- (1) If case involves credibility issues, a stipulation is not appropriate because the parties most likely will not agree on the stipulation.
- (2) Don't use stipulation if impact of witnesses themselves will be greater than evidence they testify to. Sometimes seeing a witness will lend more to a case than mere written words.

What About Subpoenas For Witnesses?

An arbitrator has no authority to issue subpoenas in a federal-sector arbitration. However, an arbitrator could make an "adverse inference" as to the testimony of a witness that either party refuses to make available.

What About an Exchange of Witness Lists?

Check the applicable collective bargaining agreement. Many CBAs have procedures and time frames for exchanging witness lists. Even if no agreed upon procedure for the exchange of witness lists exists, it is advisable to give the Union as much notice as possible as to who the anticipated Agency witnesses will be. Also make a written request to the Union for their anticipated witnesses as soon as possible. Both giving witness names and asking for a list of Union witnesses in writing may become important if notice and opportunity to prepare becomes an issue at the arbitration.

What is a Pre-Arbitration Brief?

A pre-arbitration brief is a device designed to orient the arbitrator about the arbitration to help the entire process proceed more efficiently. If used, the pre-arbitration brief should be served on both the arbitrator and the union. An example of a pre-arbitration brief is provided below. Note that includes the following information:

- a. The addresses and phone numbers of the Agency Representative, Agency Technical Advisor, and the Union President
- b. The date and location of the arbitration.
- c. Billing information.
- d. Notice that the agency reserves the right to approve or disapprove publication of the arbitration award. (Several commercial services publish selected arbitral decisions.)
- e. To whom the bill should be sent.
- f. Copies of proposed Agency exhibits.
- g. A statement of any potential issue of arbitrability (which will be discussed in more detail below).
- h. A statement of the issue. A statement of the issue will arise in virtually every arbitration. This is simply a statement of what question or issue the arbitrator has been hired to answer. Often, and not surprisingly, the Agency and the Union disagree on how the issue should be stated.
- i. Background and history of the grievance. This should be a brief statement of what the arbitration is about, and the events that lead up to the arbitration. This is meant merely to orient the arbitrator, and is not designed as an opening statement.
- j. Please note that the use of a pre-arbitration brief is a matter of preference. It is not necessarily either expected or required - however, as always check your CBA, which may require or prohibit the submission of a pre-arbitration brief.

THE ARBITRATION HEARING

What Kind of Sequence of Events Can I Expect in an Arbitration?

Unlike in an Air Force court-martial, there is no "script" or other guide that dictates the exact sequence of events in every arbitration. Arbitrators have individual preferences, and procedures do vary. However, the typical order of an arbitration is as follows:

- a. Preliminary matters.
 - (1) submission of issues;
 - (2) motion for sequestration of witnesses (this is often done simply by agreement of the parties per past practice);
 - (3) requests for admission of joint exhibits;
 - (4) requests for admission of stipulations;
 - (5) status of settlement discussions, if any.
- b. Opening statement(s). Neither party has an obligation to give an opening statement. However, this is your first opportunity to address the arbitrator and make a first impression concerning the facts of your case without objection from anyone.
- c. Order of presentation - who goes first?
 - (1) If the Union filed the grievance over a non-disciplinary action, the Union presents its evidence first.

- (2) If the Union filed the grievance over disciplinary action, management presents its evidence as to the basis of discipline first.
 - (3) If the Management filed the grievance, management presents its evidence first.
- d. Direct and cross examination of moving party's witnesses
 - e. Opposing side presents evidence. Direct and cross examination of opposing party's witnesses.
 - f. Rebuttal evidence.
 - g. Closing arguments. At the conclusion of the presentation of all of the evidence, the arbitrator may ask if there will be oral arguments made now or the submission of written briefs within an agreed upon number of days after the conclusion of the arbitration or both. The parties may agree not to submit written briefs if the parties desire a more quickly rendered arbitral decision.
 - h. Arbitrator's Decision. Consistent with time limits established in the collective bargaining agreement, the arbitrator issues a final and binding decision. Exceptions or appeals of this decision may be made under certain circumstances.

Are the Rules of Evidence Applicable?

Rules of evidence? No way, again unless otherwise stated under the CBA, which would be highly unlikely. The only observed rule of evidence is that of *relevance*. One of the recognized benefits of arbitration is the therapeutic value of allowing the facts and circumstances of the dispute to be aired, and many times the Union is not represented by an attorney, so strict rules of relevance are deemed as being too restrictive. Hearsay is admitted for "what it is worth." When hearsay is used, be prepared to offer the arbitrator some reasons why he or she should deem it reliable.

What About "New" Evidence Not Disclosed During the Course of the Grievance Process?

Evidence that was not disclosed or used during the course of the grievance process and is just being disclosed for the first time during the arbitration *might* not be allowed in or considered by an arbitrator even without the presence of bad faith, but this is the minority position. More typically, this type of evidence *is* allowed in, with delays granted to gather evidence in rebuttal.

What About Burdens of Proof?

Unless a specific standard of proof or review is required by law or the parties' collective bargaining agreement, an arbitrator has the authority to establish whatever standard of proof that he or she considers appropriate.

SPECIFIC ARBITRATION ISSUES

What Standards Are Used for Interpreting Contract Language?

Arbitrations concerning what is meant by a specific provision of a labor agreement are common. Arbitrators, in sorting through what is meant intended by the contract, and in attempting to divine what the parties meant when they signed the agreement, are guided by certain principles. Understanding them helps the attorney representative frame the contract language issue in terms that will present the Agency's position in the best possible light.

Specific Arbitration Issues – *cont'd*

AMBIGUITY - There is no need for interpretation unless the contract is ambiguous.

Ambiguous - “plausible contentions may be made for conflicting interpretations.”

Ambiguity is caused by:

- a. impossibility of foreseeing all questions that may arise.
- b. variation in meaning of words.
- c. failure to have a meeting of the minds.
- d. tunnel vision.

INTENT - Arbitrators will ascertain the “intent” of the parties.

CLEAR AND AMBIGUOUS LANGUAGE - Even though the parties may disagree as to its meaning, if the arbitrator finds the language to be unambiguous, he/she will enforce its clear meaning, regardless of inequities that may result.

LAWFUL INTERPRETATION - Whenever two interpretations are possible, one lawful and the other unlawful, the lawful interpretation will be used.

NORMAL AND TECHNICAL USAGE - In the absence of a showing of mutual understanding of the parties to the contrary, the usual and ordinary definition of terms as defined by a reliable dictionary should govern.

AGREEMENT CONSTRUED AS A WHOLE - The meaning of each paragraph and each sentence must be determined in relation to the contract as a whole.

An interpretation, which tends to nullify or render meaningless any part of the contract is avoided.

AVOIDANCE OF HARSH, ABSURD, OR NONSENSICAL RESULTS - When one interpretation of an ambiguous contract would lead to harsh, absurd or nonsensical results, while an alternative interpretation, equally consistent, would lead to just and reasonable results, the latter interpretation will be used.

TO EXPRESS ONE THING IS TO EXCLUDE ANOTHER - To expressly include one or more of a class is taken to exclude all others. To state certain exceptions indicates there are no other exceptions. To expressly include some guarantees is to exclude other guarantees.

DOCTRINE OF EJUSDEM GENERIS - Where general words follow an enumeration of specific terms, the general words will be interpreted to include or cover only things of the same general nature or class of those enumerated.

Example of Ejusdem Generis –

Example: A clause providing that seniority shall govern in all cases of layoff, transfer, “or other adjustment of personnel” should not be construed to require allocation of overtime work on the basis of seniority.

SPECIFIC V. GENERAL LANGUAGE - When there is a conflict between specific language and general language, the specific language will govern.

Example: In the question of whether the Company was obligated to furnish rain clothes to employees, where such had not been furnished or required in the past, the arbitrator was faced with the following contract language:

"The Company will continue to make reasonable provisions for the safety and health of its employees."

and

"Wearing apparel and other equipment necessary to protect employees from injury shall be provided by the Company in accordance with practices now prevailing, or as such practices may be improved from time to time by the Company."

In this case, the second clause was more specific; therefore, the arbitrator ruled that furnishing rain clothing was not required. However, had the first clause stood alone, he would have been required to determine whether the furnishing of rain clothes was reasonably necessary for the safety and health of the employees.

CONSTRUCTION IN LIGHT OF CONTEXT - Definite meaning may be given to ambiguous or doubtful words by construing them in light of the context. The meaning of words may be controlled by those with which they are associated.

AVOIDANCE OF FORFEITURE - A party claiming a forfeiture or penalty under a written instrument has the burden of providing that such is the unmistakable intention of the parties to the document.

PRECONTRACT NEGOTIATIONS - The arbitrator may consider bargaining history to determine meaning of contract language. This may include recordings, minutes of meetings, stenographic record, and oral testimony.

If one party proposes ambiguous language, and the other party is thus misled as to the first party's intentions, the arbitrator may accept the second party's understanding.

If a party attempts, but fails, to include a specific provision in the agreement, many arbitrators will hesitate to read such provision into the agreement through the process of interpretation.

NO CONSIDERATION TO COMPROMISE OFFERS - No consideration will be given to compromise offers, or to concessions offered by one party and rejected by the other, during efforts to reach a settlement prior to arbitration.

EXPERIENCE AND TRAINING OF NEGOTIATORS - If the negotiators were laymen untrained in the precise use of words, and if the contract bears evidence of a lack of precision, the arbitrator may refuse to apply a strict construction. A less liberal approach is likely to be taken if the arbitrator knows that the negotiators were capable and shrewd, or were sophisticated veterans of negotiations.

CUSTOM AND PAST PRACTICE - It is well recognized that the contractual relationship between the parties normally consists of more than one written word. Day-to-day practices mutually accepted by the parties may attain the status of contractual rights and duties, particularly where they are not at variance with any written provision negotiated into the contract by the parties, and where they are of long standing and were not changed during contract negotiations.

INTERPRETATION AGAINST PARTY SELECTING THE LANGUAGE - Any ambiguity not removed by any other rule of interpretation may be removed by construing the ambiguous language against the party who proposed it. However, it has been held that ambiguous language need not be interpreted against the party who proposed it, where there is no showing that the other party was misled.

REASON AND EQUITY - Arbitrators strive, where possible, to give ambiguous language a construction which is reasonable and equitable to both parties, rather than one which would give one party an unfair and unreasonable advantage. Arbitrators tend to "look at the language in the light of experience, and choose that course which does the least violence to the judgment of a reasonable man."

POST-ARBITRATION MATTERS

What is an Arbitration Brief?

An arbitration brief is a written document submitted to the arbitrator after the conclusion of the arbitration hearing that is used either as a substitute for a closing argument at the hearing, or a more detailed statement of the agency's case complimenting a closing argument. There is no universally accepted form for an arbitration brief, but a typical arbitration brief includes a fact section, and a law and argument section. The testimony elicited at the hearing, and the evidence previously submitted are drawn together in this document along with the applicable law and/or provisions of the applicable collective bargaining agreement so that the arbitrator clearly understands the agency's position in the arbitration.

The Arbitrator Ruled Against the Agency. Can We Appeal? And to Whom?

If the arbitration concludes with an arbitral award adverse to the Air Force, the question of appealing the decision inevitably will arise. The first question that needs to be answered is essentially what forum or agency has subject matter jurisdiction to hear the appeal. Depending on the facts and circumstances of the individual arbitration an appeal of the arbitral award might be filed with the Federal Labor Relations Authority, the Merit Systems Protection Board (in rare instances for National Guard cases), the Equal Employment Opportunity Commission, or in federal courts. This area of the law may become quite complicated depending on the particular case in question. Every possible nuance of this area of the law is impossible to cover in a handbook such as this. If consideration is being given to filing an appeal or exceptions, please remember that the attorneys and specialists at the National Guard Bureau are available to answer your questions regarding appeals and exceptions to administrative agencies and in the federal courts.

*[*Editor's Note: Much of Preparing for Arbitration was gathered from the AF JAG Central Labor Law Office (CLLO) as well as my own experience...]*

**Advanced Topics for Supervisors
GLOSSARY OF FEDERAL SECTOR
LABOR-MANAGEMENT RELATIONS TERMS**

ABROGATION TEST. A test the **Federal Labor Relations Authority** applies in determining whether an arbitration award enforcing a contract provision affecting rights reserved to management is deficient. If the provision at issue is an "arrangement" for employees adversely affected by the exercise of those rights, an award enforcing such a provision will not be set aside unless it "abrogates" those rights – i.e., unless it leaves management no discretion at all.

ACCRETION. When some employees are transferred to another employing entity whose employees are already represented by a union, the FLRA will often find that those employees have "accredit" to (i.e., become part of) the existing **unit** of the new employer, with the result that the transferred employees have a new **exclusive representative** along with a new employer.

ACTIONS DURING EMERGENCIES. Management's right "to take whatever actions may be necessary to carry out the agency mission during emergencies" doesn't come up in negotiability disputes very often. In cases decided thus far, the FLRA has held that this right is interfered with by proposals attempting to define "emergency" because such definitions would be inconsistent with management's right to independently determine whether an emergency exists.

ADMINISTRATIVE LAW JUDGE (ALJ). An individual who conducts hearings and makes initial decisions on behalf of the Federal Labor Relations Authority (FLRA). Most of the hearings are for the purpose of adjudicating unfair labor practice complaints. The decision of an ALJ is final and non-precedent setting unless one of parties files an exception to the decision with the FLRA.

ADVERSE ACTION. An official personnel action, usually taken for disciplinary reasons, which adversely affects an employee and is of a severity such as suspension for more than 14 days, reduction in grade or status, or removal. For most Federal employees, an appeal system established by statute exists. The employee may choose to use the statutory or, if covered under the contract permits, the negotiated grievance procedure, but not both.

AGENCY HEAD REVIEW. A statutory requirement that negotiated agreements be reviewed for legal sufficiency by the head of the agency (or his/her designee). This must be accomplished within 30 days from the date the agreement is executed. If disapproved, the union can challenge those determinations by filing a **negotiability** petition or an **unfair labor practice** charge with the FLRA. If not approved or disapproved within that time, the agreement goes into effect and the legality and enforceability of its terms is decided in other forums (e.g., grievance or unfair labor practice proceedings).

AGENCY SHOP. A requirement that all employees in the **unit** pay dues or fees to the union to defray the costs of providing representation.

AGREEMENT, NEGOTIATED. A collective bargaining agreement between the employer and the exclusive representative. A collective bargaining agreement must contain a negotiated grievance procedure. Also defined as a written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement. [Also known as Agreement, CBA, Contract, Labor-Management Agreement or Negotiated Agreement.]

AMENDMENT OF CERTIFICATION PETITION. That portion of the FLRA's multipurpose petition not involving a **question concerning representation** that may be filed at any time in which the petitioner asks the FLRA to amend the certification or recognition to, e.g., reflect changes in the names of the employer or the union.

AMERICAN ARBITRATION ASSOCIATION (AAA). A private nonprofit organization that, among other things, provides lists of qualified arbitrators to unions and employers.

APPLICABLE LAWS. The Authority has said that "applicable laws" within the meaning of title 5, United States Code, section 7106(a)(2), include statutes, the Constitution, judicial decisions, certain Presidential executive orders, and regulations "having the force and effect of law"—i.e., regulations that (1) affect individual rights and obligations, (2) are promulgated pursuant to an explicit or implicit delegation of legislative authority by Congress, and (3) satisfy certain procedural requirements, such as those of the Administrative Procedures Act.

APPROPRIATE ARRANGEMENT. One of three exceptions to management's rights. Under title 5, United States Code, section 7106(b)(3), a proposal that interferes with management's rights can nonetheless be negotiable if the proposal constitutes an "arrangement" for employees adversely affected by the exercise of a management right and if the interference with the management right isn't "excessive" (as determined by an "**excessive interference**" balancing test).

APPROPRIATE UNIT (BARGAINING UNIT). A grouping of employees that a union represents or seeks to represent and that the FLRA finds appropriate for **collective bargaining** purposes.

ARBITRATION. See **ARBITRATOR.**

ARBITRATOR. An impartial third party to whom the parties to an agreement refer their disputes for resolution and decision (award). An *ad hoc arbitrator* is one selected to act in a specific case or a limited group of cases. A *permanent arbitrator* is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

Grievance arbitration. When the arbitrator interprets and applies the terms of the collective bargaining agreement—and/or, in the Federal sector, laws and regulations determining conditions of employment.

Interest arbitration. When the arbitrator resolves bargaining impasses by dictating some of the terms of the collective bargaining agreement.

ARBITRABILITY. Refers to whether a given issue is subject to arbitration under the negotiated agreement. If the parties disagree whether a matter is arbitrable or not, the arbitrator must resolve this threshold issue before reviewing the merits of the dispute.

ASSIGN EMPLOYEES. A management right relating to the assignment of employees to positions, shifts, and locations. This right includes discretion to determine "the personnel requirements of the work of the position, i.e., the qualifications and skills needed to do the work, as well as such job-related individual characteristics as judgment and reliability." It also includes discretion to determine the duration of the assignment.

ASSIGN WORK. A management right relating to the assignment of work to employees or positions. The right to assign work includes discretion to determine who is to perform the work; the kind; the amount of work to be performed; the manner in which it is to be performed, as well as when it is to be performed. It also includes "the right to determine the particular qualifications and skills needed to perform the work and to make judgments as to whether a particular employee meets those qualifications."

ATTORNEY FEES. In accordance with 5 U.S.C. 5596 (Back Pay Act), an award of counsel fees if there is a determination by an arbitrator or the Merit Systems Protection Board that an unjustified or unwarranted personnel action has resulted in the withdrawal of a grievant's pay, allowances or differentials. The award must be in conjunction with an award of back pay on correction of the personnel action, the award must be reasonable and related to the personnel action, and the award must be in accordance with standards established under 5 U.S.C. 7701(g). Under 5 U.S.C. 7701(g), the employee, to obtain fees, must be the prevailing party, the award must be in the interest of justice (other than in a case involving discrimination), the fee must be reasonable, and it must have been incurred by the employee.

AUTHORITY. See **FEDERAL LABOR RELATIONS AUTHORITY.**

AUTOMATIC RENEWAL CLAUSE. Many, perhaps most, collective bargaining agreements in the Federal sector have a provision, usually located at the end of the agreement, stating that if neither party gives notice during the agreement's 105-60 day **open period** of its intent to reopen and renegotiate the agreement, the agreement will automatically renew itself for a period of x number of years.

AWARD. In labor-management arbitration, the final decision of an arbitrator, final and binding on both parties. In very limited circumstances, either party may appeal the arbitrator's decision to the Federal Labor Relations Authority (e.g. award is contrary to law).

BACK PAY. Pay awarded an employee for compensation lost due to an unjustified personnel action are governed by the requirements of the Back Pay Act, title 5, United States Code, section 5596.

BARGAINING (NEGOTIATING). A ubiquitous process--sometimes informal and spontaneous, sometimes formal and deliberate--of offer and counteroffer whereby parties to the bargaining process try to reach agreement on the terms of exchange. Formal bargaining processes with associated rituals and bargaining routines vary, depending on their political, economic, and social context.

BARGAINING AGENT. The union holding exclusive recognition for an **appropriate unit.**

BARGAINING IMPASSE (IMPASSE). When the parties have reached a deadlock in negotiations they are said to have reached an impasse. The statute provides for assistance by **Federal Mediation and Conciliation Service** mediators and the **Federal Service Impasses Panel** to help the parties settle impasses.

BARGAINING RIGHTS. Legally recognized right of the labor organization to represent employees in negotiations with employers.

BARGAINING UNIT. See **APPROPRIATE UNIT.**

BINDING ARBITRATION. The law requires that collective bargaining agreements contain a negotiated grievance procedure that terminates in binding arbitration of unresolved grievances.

BROOKHAVEN WARNINGS. Even if the Union is notified that an Agency representative is going to interview a bargaining unit employee for an upcoming arbitration, and a Union representative attends this interview, this does NOT mean that “anything goes” as far as the manner of questioning. What the Agency may consider an “interview” from the Union perspective may be considered an “interrogation.” The interview of the bargaining unit member should be voluntary and non-coercive. Brookhaven warnings are designed to minimize the potentially coercive impact of an Agency interview with an employee

BUDGET. A right reserved to management. The Authority has fashioned a two-prong test that it uses to determine whether a proposal interferes with an agency's right to determine its budget: namely, the proposal either has to prescribe particular programs, operations or amounts to be included in an agency's budget, or the agency can substantially demonstrate that the proposal would result in significant and unavoidable cost increases that are not offset by compensating benefits.

BYPASS. Dealing directly with employees rather than with the **exclusive representative** regarding negotiable **conditions of employment** of bargaining unit employees. A bypass is a violation of the **Federal Service Labor-Management Relations Statute**.

CARVEOUT. An attempt, usually unsuccessful under the **Federal Service Labor-Management Relations Statute** because it fosters unit fragmentation, to carve out (or sever)—usually along occupational lines (firefighters, nurses)—a subgroup of employees in an existing bargaining unit in order to establish a separate, more homogenous unit with a different union as **exclusive representative**.

CERTIFICATION. The FLRA's determination of the results of an election or the status of a union as the **exclusive representative** of all the employees in an appropriate unit.

CERTIFICATION BAR. One-year period after a union is certified as the **exclusive representative** for a unit during which petitions by rival unions or employees seeking to replace or remove the incumbent union will be considered untimely. The bar is designed to give the certified union an opportunity to negotiate a substantive agreement, after which the contract can become a bar, except during the contract's 105-60 day **open period**, to a representation petition. Also see **CONTRACT BAR** and **ELECTION BAR**.

CHALLENGED BALLOTS. Ballots that are challenged by election observers on the ground that the person casting the ballot isn't eligible to vote because, e.g., he or she is a **management official**, **supervisor**, **confidential employee** or engaged in **personnel work**. Challenged ballots usually are kept separate and if, after tallying the uncontested ballots, it is determined that there are enough challenged ballots to affect the outcome of the election, the Authority's agents will rule on each challenged ballot to see whether it should be counted.

CHECKOFF. See **DUES ALLOTMENT**.

CHIEF STEWARD. A union official who assists and guides shop stewards. The roles he or she plays within the union are determined by the union. The roles he or she plays in administering the contract are determined by the contract. For example, the **negotiated grievance procedure** may provide that the chief steward becomes the union representative if the grievance reaches a certain step in the grievance procedure.

CLARIFICATION OF UNIT PETITION. That portion of the FLRA's multipurpose petition *not* involving a **question concerning representation** that may be filed at any time in which the petitioner (union or management) asks the FLRA to determine the bargaining unit status of various employees—i.e., to determine whether they are management officials, supervisors, employees engaged in non-clerical personnel work, or confidential employees, and therefore excluded from the unit (and from the coverage of the collective bargaining agreement applicable to the unit and its negotiated grievance procedure).

COLLECTIVE BARGAINING. Literally, bargaining between and/or among representatives of collectivities (thus involving internal as well as external bargaining); but by custom the expression refers to bargaining between labor organizations and employers.

CIVIL SERVICE REFORM ACT OF 1978 (CSRA). Legislation enacted in October 1978 for the purpose of improving the civil service. It includes the **Federal Service Labor-Management Relations Statute** (FSLMRS), Chapter 71 of title 5 of the United States Code. Also known as Public Law 95-454 passed by the 95th Congress on October 13, 1978, which became effective on January 11, 1979. Title VII of the Act concerns Federal Service Labor-Management Relations and supersedes Executive Order 11491 as amended. This provided Federal employees a legal, statutory basis for their right to organize, bargain collectively, and participate through labor unions in decisions, which affect their working conditions. Title VII is codified at 5 U.S.C. Chapter 71.

CLASSIFICATION ACT EMPLOYEES. Federal employees--typically professional, administrative, technical, and clerical employees (i.e., "white collar" employees)--sometimes referred to a "General Schedule" employees, to distinguish them from Federal Wage System (blue collar, Wage Grade) employees.

COLLECTIVE BARGAINING OR NEGOTIATIONS. The performance of the mutual obligation of the employer and the exclusive representative to meet at reasonable times, to consult and bargain in good faith, and upon request by either party to execute a written agreement with respect to terms and conditions of employment. This obligation does not compel either party to agree to proposals or make concessions.

COLLECTIVE BARGAINING AGREEMENT (CBA). See **AGREEMENT, NEGOTIATED.**

COMPELLING NEED. Test used to determine whether a discretionary agency regulation that doesn't involve the exercise of management's is a valid limitation on the **scope of bargaining**. There are three "illustrative criteria" of compelling need: (1) the regulation is essential to the effective and efficient accomplishment of the mission of the agency, (2) the regulation is necessary to insure the maintenance of basic merit principles, and (3) the regulation implements a mandate of law or other authority (e.g., a regulation) in an essentially non-discretionary manner.

CONCILIATION. See **MEDIATION.**

CONFIDENTIAL EMPLOYEE. An employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations. Confidential employees must be excluded from bargaining units.

CONDITIONS OF EMPLOYMENT (COE). Under title 5, United States Code, section 7103(a)(14), conditions of employment "means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise [e.g., by custom or practice], affecting working conditions, except that such term does not include policies, practices, and matters -- (A) relating to political activities prohibited under subchapter III of chapter 73 of this title; (B) relating to the classification of any positions; or (C) to the extent such matters are *specifically provided for by Federal statute.*" (Emphasis added). It does not include policies, practices and matters relating to prohibited political activities, to the classification of any position, or to the extent the matters are specifically provided for by statute.

CONSULTATION. To be distinguished from **negotiation**. The FSLMRS provides for two types of consultation: between qualifying unions and agencies concerning agency-wide regulations and qualifying unions and those agencies issuing Government-wide regulations.

CONTRACT BAR. The incumbent union is protected from challenge by a rival union if there is an agreement in effect having a term of not more than three years, except during the agreement's **open period**--i.e., 105 to 60 days prior to the expiration of the agreement. See **ELECTION BAR** and **CERTIFICATION BAR**.

CONTRACTING OUT. A right reserved to management that includes the right to determine what criteria management will use to determine whether or not to contract out agency work.

"COVERED BY" DOCTRINE. A doctrine under which an agency does not have to engage in **midterm bargaining** on particular matters because those matters are already "covered by" the existing agreement.

DECERTIFICATION. The FLRA's withdrawal of a union's **exclusive recognition** because the union no longer qualifies for such recognition, usually because it has lost a representational election.

DECERTIFICATION PETITION. A petition filed by employees in an existing unit (or an individual acting on their behalf) asking that an election be held to give unit employees an opportunity to end the incumbent union's exclusive recognition. Such a petition must be accompanied by a 30 per cent showing of interest and be timely filed (i.e., not barred by election, certification or contract bars).

DIRECT EMPLOYEES. The Authority has defined this right to include discretion "to supervise and guide [employees] . . . in the performance of their duties on the job." The right to direct, *by itself*, rarely is used as the basis for finding a proposal nonnegotiable. However, when combined with the right to assign work, it is the basis for finding proposals establishing performance standards nonnegotiable.

DISCIPLINE. A right reserved to management that the FLRA has said includes the right "to investigate to determine whether discipline is justified." It also "encompasses the use of the evidence obtained during the investigation."

DUES ALLOTMENT (WITHHOLDING, CHECKOFF). Dues withholding services provided by the agency to unions that win exclusive recognition or dues withholding recognition. If the former, the services must be provided without charge to the union. Employee dues assignments must be voluntary (no union or agency shop arrangements permitted under the **Federal Service Labor-Management Relations Statute**) and may not be revoked except at yearly intervals or if a member becomes ineligible (i.e. promotion to supervisor, etc.), but must be terminated when the agreement ceases to be applicable to the employee or when the employee is expelled from membership in the union.

DUES WITHHOLDING RECOGNITION. A very limited form of recognition, under which a union that can show that it has 10 per cent of employees in an appropriate unit as members can qualify for the right only to negotiate a dues deduction arrangement. Such recognition becomes null and void as soon as a union is certified as the **exclusive representative** of the unit.

DURATION CLAUSE (TERM OF AGREEMENT). Clause in a collective bargaining agreement that specifies the time period during which the agreement is in effect (normally three years). Where an agreement has a term greater than three years, the agreement serves as a contract bar only during the first three years.

DUTY OF FAIR REPRESENTATION. "An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership."

DUTY TO BARGAIN. Broadly conceived, it refers to both (1) the *circumstances* under which there is a duty to give notice and, upon request, engage in bargaining (see **MID-TERM BARGAINING**) and (2) the *negotiability* of specific proposals. Disputes over the former usually are processed through the Authority's **unfair labor practice procedure** and frequently involve make-whole and *status quo ante* remedies. Disputes over the latter usually are processed through the Authority's no-fault **negotiability** procedure in which the Authority determines whether or not there is a duty to bargain on the proposal at issue.

ELECTION AGREEMENT. Agreement entered into by the agency and the union(s) competing for exclusive recognition dealing with campaign procedures, election observers, date and hours of election, challenge ballot procedures, mail balloting (if used), position on the ballot, payroll period for voter eligibility, and the like. Such an agreement is subject to approval by the appropriate FLRA Regional Director.

ELECTION BAR. One-year period after the FLRA has conducted a secret-ballot election for a unit of employees, where the election did not lead to the certification of a union as exclusive representative. During this one-year period the FLRA will not consider any representation petitions for that unit or any subdivisions thereof. See **CERTIFICATION BAR** and **CONTRACT BAR**.

EMPLOYEE. The term "employee" includes an individual "employed in an agency" or "whose employment in an agency has ceased because of any unfair labor practice," but does not include supervisors and management officials or anyone who participates in a strike or members of the uniformed services or employees in the Foreign Service or aliens occupying positions outside the United States.

EQUIVALENT STATUS. Status given a union challenging the incumbent union that entitles it to roughly equivalent access during the period preceding an election to facilities and services (bulletin boards, internal mail services, etc.) as that enjoyed by the incumbent union.

EXCEPTIONS TO ARBITRATION AWARDS. A claim that an arbitration award is deficient "on...grounds similar to those applied by Federal courts in private sector labor-management relations," or because it violates law, rule or regulation. Some of the "grounds similar to those applied by Federal courts" are: the award doesn't draw its essence from the agreement, the award is based on a non-fact, the arbitrator didn't conduct a fair hearing, or the arbitrator exceeded his/her authority. Under 5 U.S.C. 7122, either party to arbitration may file with the Federal Labor Relations Authority an exception (appeal) to an arbitrator's award because the award is 1) contrary to any law, rule or regulation; or 2) on other grounds similar to those applied by Federal courts in private sector labor-management relations (e.g., award does not draw its essence from the agreement; resolving issues not submitted to arbitration; granting remedy that exceeds claimed violation). The Authority will not consider an exception with respect to an award relating to actions taken in accordance with 5 U.S.C. 4303 and 5 U.S.C. 7512. See also 5 CFR Part 2425.

EXCESSIVE INTERFERENCE. A balancing test that the FLRA applies to proposals that are arrangements for employees adversely affected by the exercise of management's rights in order to determine whether they are negotiable **appropriate arrangements**. The test involves balancing the extent to which the proposal ameliorates anticipated adverse effects against the extent to which it places restrictions on the exercise of management's rights.

EXCLUSIVE RECOGNITION. Under the **Federal Service Labor-Management Relations Statute**, exclusive recognition is normally obtained by a union as a result of receiving a majority of votes cast in a representational election. The rights a union is accorded as a result of being certified as the **exclusive representative** of the employees in a bargaining unit include, among other things, the right to *negotiate* bargainable aspects of the conditions of employment of bargaining unit employees, to be afforded an opportunity to be present at *formal discussions*, to free *check-off* arrangements and, at the request of the employee, to be present at *Weingarten* examinations.

EXCLUSIVE REPRESENTATIVE . The union that is certified as the exclusive representative of a unit of employees either by virtue of having won a representation election or because it had been recognized as the exclusive representative before passage of the CSRA. See **EXCLUSIVE RECOGNITION**. A union holding exclusive recognition is sometimes referred to as the exclusive bargaining agent of the unit.

EXTERNAL LIMITATIONS ON THE EXERCISE OF MANAGEMENT'S RIGHTS. Discretion reserved to management isn't unfettered. Quite apart from any limitations that may be found in the collective bargaining agreement (such as an **appropriate arrangement** provision), its discretion must also be exercised in accordance with the laws and regulations that set limitations on management discretion. Only those external limitations on the exercise of certain rights can be enforced by the union under the **negotiated grievance procedure**. See **APPLICABLE LAWS**.

FAIR REPRESENTATION, DUTY OF. The union's duty to represent the interests of all unit employees without regard to union membership.

FEDERAL LABOR RELATIONS AUTHORITY (FLRA, AUTHORITY). The independent agency responsible for administering the **Federal Service Labor-Management Relations Statute** (FSLMRS). As such, it decides, among other things, representation issues (e.g., the bargaining unit status of certain employees), **unfair labor practices** (violations of any of the provisions of the FSLMRS), **negotiability disputes** (i.e., **scope of bargaining** issues), **exceptions to arbitration awards**, as well as resolve disputes over consultation rights regarding agency-wide and Government-wide regulations. The FLRA maintains nine regional offices.

For more information on the FLRA, see its web page at <http://www.flra.gov/>

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS). An independent agency that provides mediators to assist the parties in negotiations. Although the bulk of its work is in the private sector, it also provides its services to the Federal sector. FMCS also maintains a roster of qualified private arbitrators, panels of which are referred to the parties upon joint request. See **MEDIATION**.

For more information on the FMCS, see <http://www.flra.gov/>

FEDERAL SERVICE IMPASSES PANEL (FSIP or Panel). An entity within the FLRA that resolves bargaining impasses, chiefly by ordering the parties to adopt certain contractual provisions relating to the conditions of employment of unit employees. The Panel uses many procedures for resolving impasses, including fact-finding, med-arb, final-offer interest arbitration, either by the Panel, individual members of the Panel, the Panel's staff, or by ordering the parties to refer their impasse to an agreed-upon private arbitrator who is to provide services. The Panel is empowered to "take whatever action is necessary and not inconsistent with [the Federal Service Labor-Management Relations Statute] to resolve the impasse."

For more information on FSIP, see <http://www.flra.gov/>

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (FSLMRS). Title 5, United States Code, sections 7101 - 7135. The statute can be downloaded from <http://www.law.cornell.edu/uscode/5/ch71.html>

FINAL-OFFER INTEREST ARBITRATION. A technique for resolving bargaining impasses in which the arbitrator is forced to choose among the final positions of the parties--rather than order adoption of some intermediate position (i.e., "split the difference"). It can apply to individual items or "packages" of items. The theory is that each party, expecting that the interest arbitrator will pick the most reasonable of the two final offers, will have an incentive to move closer to the position of the other party in order to increase the odds that the arbitrator will select its final offer as the more reasonable of the two. This in turn narrows the gap between the parties. If the gap is narrow enough, it can be bridged by the parties themselves (by, e.g., splitting the difference).

FORMAL DISCUSSION. Under title 5, United States Code, section 7114(a)(2)(A), the **exclusive representative** must be given an opportunity to be represented at "any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any *grievance* or any personnel policy or practices or other *general condition of employment*." (Italics added.) Under 5 U.S.C. 7114(a)(2)(A), a discussion between an agency representative(s) and a bargaining unit employee(s) concerning any grievance or any personnel policy or practice or other condition of employment which affects bargaining unit employees. The exclusive representative must be given the opportunity to be represented at these meetings.

FREE SPEECH. Under title 5, United States Code, section 7116(e), the expression of personal views or opinions, even if critical of the union, is not an **unfair labor practice** if such expression is not made in the context of a representational election and if it "contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions." During the conduct of an election, however, management officials must be neutral. This limited right of free speech applies to agency representatives.

GENERAL COUNSEL. The General Counsel of the **Federal Labor Relations Authority** investigates **unfair labor practice** (ULP) *charges* and files and prosecutes ULP *complaints*. He/she also supervises the Authority's Regional Directors who, in turn, have been delegated authority by the FLRA to process representation petitioners.

GOOD FAITH BARGAINING. A statutory duty to approach negotiations with a sincere resolve to reach a collective bargaining agreement, to be represented by properly authorized representatives who are prepared to discuss and negotiate on any **condition of employment**, to meet at reasonable times and places as frequently as may be necessary and to avoid unnecessary delays, and, in the case of the agency, to furnish upon request data necessary to negotiation.

GOVERNMENTWIDE REGULATIONS. Regulations issued by an agency bearing on conditions of employment that must be complied with by other agencies. Such regulations are a major limitation on agency discretion and therefore on the **scope of bargaining**, which presupposes agency discretion. Agencies chiefly involved in issuing such regulations are the **Office of Personnel Management** (on personnel management) and the General Services Administration (on property management). See, also, **CONSULTATION**.

GRIEVANCE. Under title 5, United States Code, section 7103(a)(9), a grievance "means any complaint -- (A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by an employee, labor organization, or agency concerning -- (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment."

GRIEVANCE ARBITRATION. See **ARBITRATOR.**

GRIEVANCE PROCEDURE. A systematic procedure, devised by the parties to the agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration. Under title 5, United States Code, section 7121, a collective bargaining agreement must contain a grievance procedure terminating in final and binding arbitration. Apart from matters that must by statute be excluded (such as grievances relating to retirement, health and life insurance and the classification of positions), the scope of the grievance procedure is to be negotiated by deciding what matters are to be excluded from an otherwise "full scope" procedure--i.e., a procedure that covers all the matters mentioned in the statutory definition of "grievance." See **NEGOTIATED GRIEVANCE PROCEDURE.**

HIRE EMPLOYEES. A right reserved to management. The Authority has said that "the probationary period, including summary termination, constitutes an essential element of an agency's right to hire under [title 5, United States Code,] section 7106(a)(2)(A)."

See **SELECT** for a discussion of the much more frequently utilized right of management, in filling positions, to make selections for appointments from any appropriate source. The relationship between the right to hire and the right to select is still unclear.

IMPASSE. See **BARGAINING IMPASSE.**

I&I (IMPACT AND IMPLEMENTATION) BARGAINING. Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the union and, upon request, bargain on **procedures** that management will follow in implementing its protected decision as well as on **appropriate arrangements** for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining, which is the commonest variety of **midterm bargaining.**

INFORMATION. The union, to the extent not prohibited by law (e.g., the Privacy Act), is entitled, under certain circumstances (see **PARTICULARIZED NEED**, below), to data "for full and proper discussion, understanding, and negotiation of subjects within the **scope of bargaining.**" The agency must provide that information free of charge.

INTEREST. In **interest-based bargaining**, the concerns, needs, or desires behind an issue: *why* the issue is being raised.

INTEREST ARBITRATION. The arbitrator, instead of interpreting and applying the terms of an agreement to decide a grievance, determines what provisions the parties are to have in their collective bargaining agreement. Also see **ARBITRATION.**

INTEREST-BASED BARGAINING (IBB). A bargaining technique in which the parties start with (or at least focus on) interests rather than proposals; agree on criteria of acceptability that will be used to evaluate alternatives; generate several alternatives that are consistent with their interests, and apply the agreed-upon acceptability criteria to the alternatives so generated in order to arrive at mutually acceptable contract provisions. The success of the technique depends, in large measure, on mutual trust and a willingness to share information. But even where this is lacking, the technique, with its focus on interests and on developing alternatives, tends to make the parties more flexible and open to alternative solutions and thus increases the likelihood of agreement.

INTERNAL SECURITY PRACTICES. A right reserved to management by title 5, United States Code, section 7106(a)(1). The right to determine the internal security practices of an agency isn't limited to establishing "those policies and actions which are part of the Agency's plan to secure or safeguard its physical property against internal and external risks, to prevent improper or unauthorized disclosure of information, or to prevent the disruption of the Agency's activities." It also extends to safeguarding the agency's personnel.

INTERVENTION/INTERVENOR. The action taken by a competing labor organization (intervenor) to place itself as a contender on the ballot for a recognition election originally initiated by another union (petitioner). Non-incumbent intervenors need only produce a 10 per cent showing of interest to be included on the ballot.

INVESTIGATORY EXAMINATION. See **WEINGARTEN RIGHT**.

LABOR ORGANIZATION. A union--i.e., an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment.

LAYOFF EMPLOYEES. Right reserved to management by title 5, United States Code, section 7106(a)(2)(A).

MANAGEMENT OFFICIAL. An individual who formulates, determines, or influences the policies of the agency. Such individuals are excluded from **appropriate units**.

MANAGEMENT RIGHTS. Refers to types of discretion reserved to management officials by statute.

- **Core rights.** Consists of the rights "to determine the mission, budget, organization, number of employees, and internal security practices of the agency."
- **Operational rights.** Consists of the rights to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; with respect to filling positions, to make selections for appointments from-- among properly ranked and certified candidates for promotion; or any other appropriate source; and to take whatever actions may be necessary to carry out the agency mission during emergencies.
- **Three exceptions.** The three title 5, United States Code, section 7106(b) exceptions to the above involve (1) **title 5, United States Code, section 7106(b)(1) permissive subjects** of bargaining (e.g., staffing patterns, technology) on which, under the statute, agencies can elect to bargain, (2) **procedures** management will follow in exercising its reserved rights, and (C) **appropriate arrangements** for employees adversely affected by the exercise of management rights.

1. "Permissive" subjects exception. This exemption to management's rights "staffing patterns" -- i.e., with "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty" and with "the technology, methods, and means of performing work." Under the statute such matters are, moreover, negotiable "at the election of the agency" even if the proposal also directly interferes with the exercise of a title 5, United States Code, section 7106(a) right.

2. Procedural "exception." Title 5, United States Code, section 7106(b)(2), dealing with procedures, really isn't an exception to management's rights as the Authority has held that a proposed "procedure" that "directly interferes" with a management right is not a procedure within the meaning of title 5, United States Code, section 7106(b)(2).

3. Appropriate arrangement exception. Title 5, United States Code, section 7106(b)(3) applies only if the proposal is intended to ameliorate the adverse effects of the exercise of a management right. Where such is the intent of the proposal, the Authority applies a balancing test in which it weighs the extent to which the proposal ameliorates the expected adverse effects against the extent to which it interferes with the management right and determines whether or not the specific proposal "excessively" interferes with management rights. If the interference is "excessive," the proposal isn't an "appropriate arrangement" and therefore is nonnegotiable. If otherwise, the proposal is a negotiable appropriate arrangement, even though it interferes with management's rights.

To qualify as an "arrangement" to which it would be proper to apply the excessive interference balancing test, the proposal has to be "tailored" so that it applies only to those employees who would be adversely affected by the proposed management decision.

MEDIATION. Use of a third party, usually a neutral without authority to impose a settlement, to assist the parties to reach agreement. Mediation techniques vary, but one common practice is for the labor mediator to separate the parties (in order to control communications) and meet with them separately and, in effect, engage in interest-based bargaining with them. Because the mediator usually is a neutral who cannot impose a settlement and because he or she is expected to keep confidences, each party is more willing to be open with the mediator than with the other party (or with an interest arbitrator). Because of this greater openness, the mediator often is able to see areas of possible agreement that the parties are unable to see in direct, unmediated, negotiations.

MED-ARB (mediation followed by interest arbitration). A process in which a neutral with authority to impose (or to recommend the imposition of) a settlement, first resorts to mediation techniques in an attempt to get the parties to voluntarily agree on unsettled matters, but who can later impose a settlement if mediation fails. The theory behind it is that the parties will be more receptive to the med-arb's suggestions for settlement if they know that the med-arb has authority to impose a settlement.

MIDTERM BARGAINING / NEGOTIATIONS. Literally, all bargaining that takes place during the life of the contract. Usually contrasted with term bargaining – i.e., with the renegotiation of an expired (or expiring) contract. Midterm bargaining includes **I&I bargaining**, **union-initiated midterm bargaining on new matters**; and bargaining pursuant to a **re-opener** clause. It excludes matters that are already "**covered by**" the term agreement.

MISSION OF THE AGENCY. A right reserved to management by title 5, United States Code, section 7106(a)(1). Although illustrative case law on this particular right is meager, it is generally recognized that the right encompasses the determination of the products and services of an agency.

NATIONAL CONSULTATION RIGHTS (NCR). A union accorded national consultation rights is entitled to be consulted on *agency-wide* regulations before they are promulgated. NCR is to be distinguished from consultation rights with respect to *Government-wide* regulations, under which a union accorded such recognition must be consulted on proposed Government-wide regulations before they are promulgated.

NATIONAL UNION. Ordinarily, a union composed of a number of affiliated local unions. The Bureau of Labor Statistics in its union directory, defines a national union as one with agreements with different employers in more than one state, or an affiliate of the AFL-CIO, or a national organization of employees.

NEGOTIABILITY. Refers to whether a given topic is subject to bargaining between an agency and the union. The Federal Labor Relations Authority makes the final decision whether a subject is negotiable or nonnegotiable.

NEGOTIABILITY DISPUTES. Disputes over whether a proposal is nonnegotiable because (a) it is inconsistent with laws, rules, and regulations establishing conditions of employment and/or (b) it interferes with the exercise of rights reserved to management. Negotiability disputes normally are processed under the FLRA's "no fault" negotiability procedures

NEGOTIATED GRIEVANCE PROCEDURE (NGP). A collective bargaining agreement (CBA) must contain a grievance procedure terminating in final and binding arbitration. The NGP, with a few exceptions involving statutory alternatives (e.g., adverse and performance-based actions), is the exclusive administrative procedure for grievances falling within its coverage. Apart from the matters excluded from the coverage of the NGP by statute – e.g., retirement, life and health insurance, classification of positions – the NGP covers those matters specified in the definition of grievance in title 5, United States Code, section 7103(a)(9) (see **GRIEVANCE**, above), minus any of those matters that the parties agree to exclude from the NGP.

That is, under the FSLMRS program, the parties negotiate to determine what matters to *exclude* from the procedure rather than what matters it is to *include*—just the opposite from pre-FSLMRS and private sector practices.

A systematic procedure agreed to by the negotiating parties for the resolution of grievances. The negotiated grievance procedure is applicable only to employees in the bargaining unit. The scope of the negotiated grievance procedure is negotiated by the parties and may include certain matters for which a statutory appeal procedure exists, unless the parties negotiate their exclusion. Several matters **cannot** be included under its scope: 1) actions taken for violations of the Hatch Act; 2) retirement, life insurance or health insurance; 3) a suspension or removal taken in the interest of national security; 4) any examination, certification, or appointment; or 5) the classification of any position which does not result in the reduction in grade or pay of an employee. 5 U.S.C. 7121 requires the inclusion of a negotiated grievance procedure in all agreements and requires binding arbitration as the final step of the negotiated grievance procedure.

NEGOTIABILITY APPEAL (PETITION FOR REVIEW). If an agency believes that a union proposal is contrary to law or applicable regulation, or is otherwise nonnegotiable under the statute, it may inform the union of its refusal to negotiate. 5 U.S.C. 7117 provides a right to appeal the agency's determination of non-negotiability to the FLRA.

NUMBER OF EMPLOYEES OF AN AGENCY. A right reserved to management by title 5, United States Code, section 7106(a)(1). There have been no FLRA decisions in which a proposal has been found nonnegotiable because it interfered with this right.

OBJECTIONS TO ELECTION. Charges filed with the FLRA contesting election results because of alleged irregularities in the conduct of a representational election. If the objections are sustained, the FLRA could set aside the election results and order that the election be rerun.

OFFICE OF PERSONNEL MANAGEMENT (OPM). Issues **Government-wide regulations** on personnel matters that may have a substantial impact on the **scope of bargaining**; consults with labor organizations on those regulations; provides technical advice and assistance on labor-management relations matters to Federal agencies; also provides information on personnel matters to Federal agencies and the general public (e.g., this annotated glossary); exercises oversight with regard to statutory and regulatory requirements relating to personnel matters; and provides support services for the National Partnership Council.

OFFICIAL TIME. At one time treated as a term of art created by title 5, United States Code, section 7131, involving paid time for employees serving as union representatives. However, the Authority has said that section 7131(d) does not preclude parties to a collective bargaining agreement from agreeing to provide official time for other matters; that is, matters other than those relating to labor-management relations activities.

Union negotiators (no more than the number of management negotiators) who also are unit employees are statutorily entitled to official time to negotiate agreements. Official time may not, however, be used to perform internal union business. Title 5, United States Code, section 7131(d) allows the parties to negotiate the amount of official time that shall be granted to specified union representatives for the performance of specified representational functions.

OPEN PERIOD. The 45-day period (105 - 60 days prior to expiration of agreement) when the union holding exclusive recognition is subject to challenge by a rival union or by unit employees who no longer want to be represented by the union. The open period is an exception to the **contract bar** rule.

OPM. Refers to the Office of Personnel Management (OPM). OPM supports Government program managers in their personnel management responsibilities through a range of programs. This includes administering or requiring a merit system for Federal employment; providing services related to retirement, health benefits and life insurance benefits for federal employees.

ORGANIZATION. A right reserved to management. According to the FLRA, this right encompasses an agency's authority to determine its administrative and functional structure, including the relationship of personnel through lines of control and the distribution of responsibilities for delegated and assigned duties. That is, the right includes the authority to determine how the agency will structure itself to accomplish its mission and functions.

OPPOSITION TO EXCEPTION TO ARBITRATION AWARD. If a party files an exception (appeal) to an arbitrator's award, the other party may oppose the exception to the Authority in accordance with 5 CFR 2425.1. Oppositions to exceptions must be filed within thirty (30) days after the date of service of the exception.

PACKAGE BARGAINING. A negotiating technique whereby contract proposals are grouped into a "package" usually offering substantial concessions by one party, in exchange for substantial gains. Frequently, the package proposal will be advanced with the condition that it must either be accepted as presented or rejected entirely.

PANEL. See **FEDERAL SERVICE IMPASSES PANEL.**

PARTICULARIZED NEED. The Authority's analytical approach in dealing with union requests for information under title 5, United States Code, section 7114(b)(4). Under this approach, the union must establish a "particularized need" for the information and the agency must assert any countervailing interests. The Authority then balances the one against the other to determine whether a refusal to provide information is an **unfair labor practice**.

PARTNERSHIP. A form of employee participation established pursuant to Executive Order 12871 in which the parties are expected to deal with matters relating to improving *the performance of the agency* in a non-adversarial, non-litigious manner. The scope of partnership deliberations are broader than those of collective bargaining in that they usually include, e.g., deliberations over the conditions of employment of non-bargaining unit employees. Partnership deliberations also include deliberations over staffing patterns, technology, methods and means--matters integral to improving *agency* performance, which is the overriding purpose of the Order.

PAST PRACTICE (ESTABLISHED PRACTICE). Existing practices sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement. Arbitrators use evidence of past practices to interpret ambiguous contract language. In addition, past practices can be enforced under the **negotiated grievance procedure** because they are considered part of the agreement. To qualify as an enforceable established practice, the practice has to be legal, in effect for a certain period, and known and sanctioned by management.

Existing practices sanctioned by use and acceptance, which amount to terms and conditions of employment even though not specifically included in the collective bargaining agreement. In order to constitute a binding past practice, it must be established that (1) the practice must involve a condition of employment; and (2) the practice must be consistently exercised for an extended period of time and followed by both parties, or followed by one party and not challenged by the other over a substantially long duration. It should be noted that if a matter is not a condition of employment, it does not become a condition of employment either through practice or agreement.

PERMISSIVE SUBJECTS OF BARGAINING. There are two types of proposals dealing with so-called "permissive subjects of bargaining": proposals dealing with (1) matters covered by title 5, United States Code, section 7106(b)(1) – i.e., with staffing patterns, technology, and methods and means of performing the agency's work, and (2) matters that are not conditions of employment of bargaining unit employees. Regarding the former, it should be noted that although an agency can "elect" not to bargain on a (b)(1) matter, the President has directed heads of agencies to instruct agency management to bargain on such matters in section 2(d) of Executive Order 12871. Regarding the latter, it should be kept in mind that, apart from the statutory exclusions from the definition of **condition of employment** found in title 5, United States Code, section 7103(a)(14), a matter may be found not be a condition of employment because (1) it deals with the conditions of employment of *non-unit employees* (e.g., a proposed procedure for filling supervisory vacancies) or (2) there is no direct connection between the matter dealt with by the proposal and the work situation or employment relationship of bargaining unit employees (e.g., a proposal authorizing unit employees to hunt on a military base when off duty). Regardless of type, once agreement is reached on a permissive subject of bargaining, that agreement cannot be disapproved by the agency head, and is enforceable under the negotiated grievance procedure.

PERSONNEL BY WHICH AGENCY OPERATIONS ARE CONDUCTED. A right reserved to management by title 5, United States Code, section 7106(a)(2)(B).

PICKETING. Demonstrating, usually near the place of employment, to publicize the existence of a labor-management dispute. This is commonly called **Informational Picketing** and is directed toward advising the public about the issue in dispute. This is specifically protected by 5 U.S.C. 7116(b) so long as the picketing does not interfere with agency operations. This is not to be confused with a "strike" as Federal employees are not permitted to strike under Federal law. Informational picketing may only be conducted outside an employee's established duty hours or the employee must be in an approved leave status.

PROCEDURES. Under title 5, United States Code, section 7106(b)(2), the procedures observed by management in exercising its reserved rights are negotiable. To qualify as a negotiable (b)(2) procedure, the proposed "procedure" must not require the use of standards that, by themselves, directly interfere with management's reserved rights or otherwise have the effect of limiting management's reserved discretion.

QUESTION CONCERNING REPRESENTATION (QCR). Refers to a petition in which a union seeks to be the **exclusive representative** of an **appropriate unit** of employees, or in which employees in an existing unit want to decertify the incumbent union. The filing of such a petition is said to raise a question concerning representation--i.e., whether, and by whom, unit employees are to be represented. Such petitions are distinguished from petitions seeking to clarify the composition of existing units (e.g., whether certain individuals are in or out of the unit) or to amend the names of the parties to the exclusive bargaining relationship.

RATIFICATION. Formal approval of a newly negotiated agreement by vote of the labor organization members affected.

REOPENER CLAUSE. Provisions in the CBA specifying the conditions under which one or either party can reopen for renegotiation the agreement or designated parts of the agreement. Although some agreements provide for mutual consent reopeners, such reopeners are unnecessary as the parties can of course agree to reopen and renegotiate their agreement at any time, notwithstanding the contents of the agreement. The purpose of a reopener is to enable one party to *compel* the other party to renegotiate the provisions covered by the reopener.

REPRESENTATION ELECTION. Secret-ballot election to determine whether the employees in an appropriate unit shall have a union as their **EXCLUSIVE REPRESENTATIVE**.

REPRESENTATIONAL FUNCTIONS. Activities performed by union representatives on behalf of the employees for whom the union is the **exclusive representative** regarding their conditions of employment. It includes, among other things, negotiating and policing the terms of the agreement, attending partnership council meetings, being present at **formal discussions** and, upon employee request, **Weingarten examinations**.

REPRESENTATION ISSUES. Issues related to how a union gains or loses **exclusive recognition** for a bargaining unit, determining whether a proposed unit of employees is appropriate for the purposes of exclusive recognition, and determining the unit status of various employees.

REPUDIATION OF AGREEMENT. Framework developed by the FLRA to determine whether (1) the breach of the agreement was clear and patent and (2) the provision breached went to the heart of the agreement.

RETAIN EMPLOYEES. A right reserved to management. Although the rights to layoff and retain appear to be opposite sides of the same coin, the FLRA rarely mentions the right to retain when invoking the right to layoff to find nonnegotiable proposals dealing with RIF's and furloughs.

SCOPE OF BARGAINING. Matters about which the parties can negotiate. See **NEGOTIABILITY DISPUTES**.

SELECT (WITH RESPECT TO FILLING POSITIONS). The statute reserves to management the right to make selections for appointments from any appropriate source. The right to select includes discretion to determine what knowledge, skills and abilities are necessary for successful performance in the position to be filled, as well as to determine which candidates possess these qualifications.

SENIORITY. Term used to designate an employee's status relative to other employees for determining order of overtime assignments (n/a to National Guard Technicians), compensatory time assignments, vacations, etc. Straight seniority is seniority acquired solely through length of service. Departmental or shop seniority considers status factors in a particular department or shop, rather than the entire agency. A seniority list is a ranking of individual workers in order of seniority.

SHOWING OF INTEREST (SOI). The required evidence of employee interest supporting a representation petition. The SOI is 30 per cent for a petition seeking exclusive recognition; 10 per cent to intervene in the election; and 10 per cent when petitioning for dues allotment recognition. Evidence of such a showing can consist of, e.g., signed and dated authorization cards or petitions.

STAFFING PATTERNS. A short-hand expression used to refer to title 5, United States Code, section 7106(b)(1)'s long-winded reference to "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty." Under the statute, agencies can elect not to bargain on such matters.

STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS. Standards regarding internal democratic practices, fiscal responsibility, and procedures to which a union must adhere to qualify for recognition. The Department of Labor has responsibility for making known and enforcing standards of conduct for unions in the Federal and private sectors.

STEWARD (SHOP, UNION, AREA). Union representative in an organization to whom the union assigns various representational functions, such as investigating and processing grievances, representing employees, collecting dues, soliciting new members, etc. Stewards are usually fellow employees who are trained by the union to carry out these duties.

STRIKE (PROHIBITED BY STATUTE). A temporary stoppage of work by a group of employees in connection with a labor dispute. In the Federal sector, strikes are specifically prohibited by Federal law and constitute an unfair labor practice under Section 7116(b)(7) of the Federal Service Labor-Management Relations Statute. Slowdowns, sickouts and related tactics are also prohibited by the Statute.

SUCCESSORSHIP. Where, as the result of a reorganization, a portion of an existing unit is transferred to a gaining employer, the latter will be found to be the successor employer (thus inheriting, along with the employees, the **exclusive representative** of those employees and the collective bargaining agreement that applied to those employees) if: (a) the post-transfer unit is appropriate, (b) the transferred bargaining unit employees are a majority in the post-transfer unit, (c) the gaining employer has "substantially" the same mission as the losing employer, (d) the transferred employees perform "substantially" the same duties under "substantially" similar working conditions in the gaining entity, and (e) it is not demonstrated that an election is necessary to determine representation.

SUPERVISOR. Under title 5, United States Code, section 7103(a)(10), a supervisor is "an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority[.]" The individual need exercise only one of the indicia of supervisory authority, not a majority of them, to qualify as a supervisor for the purposes of the statute, provided it involves the consistent exercise of independent judgment.

UNFAIR LABOR PRACTICE (ULP). A violation of any of the provisions of the Federal Service Labor-Management Relations Statute. It is a term of art that is narrower in scope than the misleading adjective "unfair" suggests. ULP *charges* are filed with the Authority by an individual, a union, or an employer. They are investigated by the General Counsel who issues a ULP *complaint* if the General Counsel concludes the charge(s) have merit, and who prosecutes the matter before an Administrative Law Judge in a fact-finding hearing and before the Authority, which decides the matter.

The most common agency ULPs are **duty-to-bargain** ULPs (usually a failure to give the union notice of proposed changes in conditions of employment and/or engage in impact and implementation bargaining), **formal discussion** ULPs, **Weingarten** ULPs, and failure-to-provide-**information** ULPs. The most common ULP committed by a union is a failure to fairly represent (see **fair representation**) all unit members without regard to union membership.

UNILATERAL ACTION. Implementation of management decisions concerning personnel policies and matters affecting working conditions without providing the union advance notice of such changes in working conditions and an opportunity to negotiate to the extent permitted by law.

UNION. A labor organization "composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment..."

UNION-INITIATED MIDTERM BARGAINING ON NEW MATTERS. Absent a bargaining waiver, the union has the right to initiate, during the life of the existing agreement, bargaining on matters not "**covered by**" the agreement. There is a split in the circuits, which the Supreme Court has agreed to resolve, regarding this statutory right, with the D.C. Circuit holding that the union has such a right (see *NTEU v. FLRA*, 810 F.2d 295 (D.C. Cir. 1987)), and the Fourth Circuit holding that it does not (see *SSA v. FLRA*, 956 F.2d 1280 (4th Cir. 1992). Also see *Dept. of Energy v. FLRA*, Nos. 95-2949 and -3113 (4th Cir. Feb. 13, 1997), where the 4th Circuit went further and held that the FSLMRS *prohibits* such bargaining; consequently, such a right could not be established by collective bargaining agreement.

UNIT. See **APPROPRIATE UNIT**.

UNIT CONSOLIDATION. A no-risk procedure for combining existing units into one or more larger appropriate units.

UNIT DETERMINATION ELECTION. When (a) several petitioners seek to represent different parts of an agency, (b) the proposed units overlap, and (c) the FLRA finds that more than one of the proposed units are appropriate, it lets the employees vote for units as well as unions.

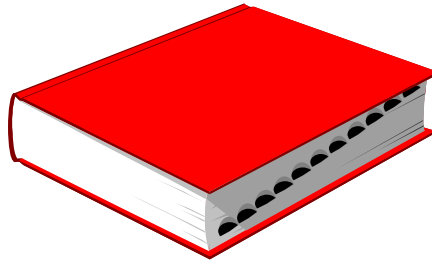
WAIVER. An agreement reached between union and management whereby one party voluntarily gives up rights afforded to it. For waivers to be enforceable, they must be "clear and unmistakable." It should be noted that management cannot waive rights afforded to management under 5 U.S.C. 7106(a).

WEINGARTEN RIGHT / EXAMINATIONS. Under title 5, United States Code, section 7114(a)(2)(B), an employee being examined in an investigation (an investigatory examination or interview) is entitled to union representation if (1) the examination is conducted by a representative of the agency, (2) the employee reasonably believes that the examination may result in disciplinary action, and (3) the employee asks for representation. Such examinations are called *Weingarten* examinations because Congress, in establishing this right, specifically referred to the private sector case establishing such a right.

WORKING CONDITIONS. See **CONDITIONS OF EMPLOYMENT.**

ZIPPER CLAUSE. An agreement provision specifically barring any attempt to reopen negotiations during the terms of the agreement. [For a related term, see **Reopening Clause.**]

Updated 15 October 2000



Labor Relations – Advanced Supervisory Topics – “The Statute”

TITLE 5 OF THE UNITED STATES CODE – GOVERNMENT ORGANIZATION AND EMPLOYEES PART III—EMPLOYEES SUBPART F – LABOR-MANAGEMENT AND EMPLOYEE RELATIONS CHAPTER 71 LABOR-MANAGEMENT RELATIONS

SUBCHAPTER I-- GENERAL PROVISIONS

§ 7101. Findings and purpose

- (a) The Congress finds that--
- (1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them--
 - (A) safeguards the public interest,
 - (B) contributes to the effective conduct of public business, and
 - (C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and
 - (2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.
- Therefore, labor organizations and collective bargaining in the civil service are in the public interest.
- (b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

§ 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right--

- (1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- (2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

§ 7103. Definitions; application

- (a) For the purpose of this chapter--
- (1) "person" means an individual, labor organization, or agency;
 - (2) "employee" means an individual--
 - (A) employed in an agency; or
 - (B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;but does not include--
 - (i) an alien or noncitizen of the United States who occupies a position outside the United States;
 - (ii) a member of the uniformed services;
 - (iii) a supervisor or a management official;
 - (iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce; or
 - (v) any person who participates in a strike in violation of section 7311 of this title;
 - (3) "agency" means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Department of Veterans Affairs), the Library of Congress, and the Government Printing Office, but does not include--
 - (A) the General Accounting Office;
 - (B) the Federal Bureau of Investigation;
 - (C) the Central Intelligence Agency;
 - (D) the National Security Agency;
 - (E) the Tennessee Valley Authority;
 - (F) the Federal Labor Relations Authority; or
 - (G) the Federal Service Impasses Panel.
 - (4) "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include--
 - (A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
 - (B) an organization which advocates the overthrow of the constitutional form of government of the United States;
 - (C) an organization sponsored by an agency; or
 - (D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;
 - (5) "dues" means dues, fees, and assessments;
 - (6) "Authority" means the Federal Labor Relations Authority described in section 7104(a) of this title;

- (7) "Panel" means the Federal Service Impasses Panel described in section 7119(c) of this title;
- (8) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;
- (9) "grievance" means any complaint--
- (A) by any employee concerning any matter relating to the employment of the employee;
 - (B) by any labor organization concerning any matter relating to the employment of any employee; or
 - (C) by any employee, labor organization, or agency concerning--
 - (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
 - (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;
- (10) "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;
- (11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;
- (12) "collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;
- (13) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;
- (14) "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--
- (A) relating to political activities prohibited under subchapter III of chapter 73 of this title;
 - (B) relating to the classification of any position; or
 - (C) to the extent such matters are specifically provided for by Federal statute;
- (15) "professional employee" means--
- (A) an employee engaged in the performance of work--
 - (i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);
 - (ii) requiring the consistent exercise of discretion and judgment in its performance;
 - (iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and
 - (iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or
 - (B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;
- (16) "exclusive representative" means any labor organization which--
- (A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or
 - (B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit--
 - (i) on the basis of an election; or
 - (ii) on any basis other than an election,
- and continues to be so recognized in accordance with the provisions of this chapter;
- (17) "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and
- (18) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.
- (b)(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that--
- (A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and
 - (B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.
- (2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

§ 7104. Federal Labor Relations Authority

- (a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.
- (b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority. The Chairman is the chief executive and administrative officer of the Authority.

(c) A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of--

- (1) the date on which the member's successor takes office, or
- (2) the last day of the Congress beginning after the date on which the member's term of office would (but for this paragraph) expire.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and decisions it has rendered.

(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may--

- (A) investigate alleged unfair labor practices under this chapter,
- (B) file and prosecute complaints under this chapter, and
- (C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

§ 7105. Powers and duties of the Authority

(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority--

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

(E) resolve issues relating to the duty to bargain in good faith under section 7117(c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e)(1) The Authority may delegate to any regional director its authority under this chapter--

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of--

(1) the date of the action; or

(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may--

(1) hold hearings;

(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

§ 7106. Management rights

- (a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency--
- (1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
- (2) in accordance with applicable laws--
- (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
- (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
- (C) with respect to filling positions, to make selections for appointments from--
- (i) among properly ranked and certified candidates for promotion; or
- (ii) any other appropriate source; and
- (D) to take whatever actions may be necessary to carry out the agency mission during emergencies.
- (b) Nothing in this section shall preclude any agency and any labor organization from negotiating--
- (1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
- (2) procedures which management officials of the agency will observe in exercising any authority under this section;
- or
- (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

SUBCHAPTER II--

RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

§ 7111. Exclusive recognition of labor organizations

- (a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.
- (b) If a petition is filed with the Authority--
- (1) by any person alleging--
- (A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or
- (B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or
- (2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;
- the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after a reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.
- (c) A labor organization which--
- (1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;
- (2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or
- (3) has submitted other evidence that it is the exclusive representative of the employees involved;
- may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.
- (d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose--
- (1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them;
- or
- (2) not to be represented by a labor organization.
- In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.
- (e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.
- (f) Exclusive recognition shall not be accorded to a labor organization--
- (1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;
- (2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;
- (3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless--
- (A) the collective bargaining agreement has been in effect for more than 3 years, or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

§ 7112. Determination of appropriate units for labor organization representation

(a) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes--

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization--

(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

§ 7113. National consultation rights

(a) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall--

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization--

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

§ 7114. Representation rights and duties

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at--

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if--

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

- (5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from--
- (A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or
 - (B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.
- (b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation--
- (1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;
 - (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;
 - (3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;
 - (4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--
 - (A) which is normally maintained by the agency in the regular course of business;
 - (B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
 - (C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and
 - (5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.
- (c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.
- (2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).
- (3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.
- (4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

§ 7115. Allotments to representatives

- (a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.
- (b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when--
- (1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or
 - (2) the employee is suspended or expelled from membership in the exclusive representative.
- (c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.
- (2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.
- (B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

§ 7116. Unfair labor practices

- (a) For the purpose of this chapter, it shall be an unfair labor practice for an agency--
- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
 - (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
 - (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
 - (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;
 - (5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;
 - (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;
 - (7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
 - (8) to otherwise fail or refuse to comply with any provision of this chapter.
- (b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization--
- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure--

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121(e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which--

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation, shall not, if the expression contains no threat or reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if--

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

(B) the Authority determines that a compelling need for a rule or regulation does not exist.

(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by--

(A) filing a petition with the Authority; and

(B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall--

(A) file with the Authority a statement--

(i) withdrawing the allegation; or

(ii) setting forth in full its reasons supporting the allegation; and

(B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

(d)(1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall--

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization--

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

§ 7118. Prevention of unfair labor practices

(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice--

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

(C) of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of--

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period, the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order--

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of any employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel

Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

§ 7119. Negotiation impasses; Federal Service Impasses Panel

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what matter it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse--

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasses, but only if the procedure is approved by the Panel.

(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either--

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may--

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

§ 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for--

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that--

(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically

provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation--

- (1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or
- (2) take any other appropriate disciplinary action.

SUBCHAPTER III-- GRIEVANCES, APPEALS, AND REVIEW

§ 7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e) and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in subsection (a) of this section shall--

- (A) be fair and simple,
- (B) provide for expeditious processing, and
- (C) include procedures that--

- (i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;
- (ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and
- (iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2)(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order--

- (i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and
- (ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

- (c) The preceding subsections of this section shall not apply with respect to any grievance concerning--
 - (1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);
 - (2) retirement, life insurance, or health insurance;
 - (3) a suspension or removal under section 7532 of this title;
 - (4) any examination, certification, or appointment; or
 - (5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g)(1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected--

(A) the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

§ 7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient--

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations; the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

§ 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under--

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination), may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

SUBCHAPTER IV-- ADMINISTRATIVE AND OTHER PROVISIONS

§ 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section--

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

§ 7132. Subpenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may--

(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

§ 7133. Compilation and publication of data

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

§ 7134. Regulations

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

(a) Nothing contained in this chapter shall preclude--

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.



Suggested Web Sites and Sources for Labor Relations Information:

“Free” General Sources for Labor Relations Information and Research

<http://www.cpms.osd.mil/fas>

<http://www.flra.gov>

<http://www.opm.gov>

<http://www.fmcs.gov>

More “Free Sources for Labor Law (5 USC and 5 CFR)

<http://aflsa.jag.af.mil> - (must be signed up as an authorized user)

<http://www.law.cornell.edu>

<http://www.access.gpo.gov>

Federal Civilian Personnel Information from Air Force, Army and GA NG

<http://guardnet.ngb.army.mil> - (National Guard Bureau Intranet)

<http://www.afpc.randolph.af.mil>

<http://cpol.army.mil>

<http://www.gahro.ang.af.mil> - (Georgia National HRO Website)

Commercial Vendors for Labor and Employee Relations Information:

<http://www.personnet.com> - (outstanding if you can afford the subscription)

<http://www.lrp.com> - (also excellent and lower priced than personnet)

<http://www.feds.com>



Publications Available:

Federal Labor Relations Reporter – LRP, Inc.

Federal Arbitration Advocate's Handbook, LRP Publications – Celmer, Esq.

FLRA Law and Practice by Peter Broida – Dewey Publications, Inc.

Handling Third Party Cases in the Federal Sector – National Guard Bureau

(Blank Page)