

Professional Aviation Safety Specialists (AFL-CIO)

Guide to the Labor-Management Relations Statute



Table of Contents

Section 1: 5 USC, Chapter 71

Section 2: Employee Rights

Section 3: Union Rights

Section 4: Unfair Labor Practices (ULPs)

Section 5: Collective Bargaining

Section 6: Weingarten Meetings

Section 7: Formal Discussion

Section 8: Request for Information

Section 9: Labor History

Section 10: LMR Definitions/Terms of Art



Section 1 – 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

SUBSECTION I—GENERAL PROVISIONS

- 7101. Findings and purpose.
- 7102. Employees' rights.
- 7103. Definitions; application.
- 7104. Federal Labor Relations Authority.
- 7105. Powers and duties of the Authority.
- 7106. Management rights.

SUBSECTION II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

- 7111. Exclusive recognition of labor organizations.
- 7112. Determination of appropriate units for labor organization representation.
- 7113. National consultation rights.
- 7114. Representation rights and duties.
- 7115. Allotments to representatives.
- 7116. Unfair labor practices.
- 7117. Duty to bargain in good faith; compelling need; duty to consult.
- 7118. Prevention of unfair labor practices.
- 7119. Negotiation impasses; Federal Service Impasses Panel.
- 7120. Standards of conduct for labor organizations.

SUBSECTION III—GRIEVANCES, APPEALS, AND REVIEW

- 7121. Grievance procedures.
- 7122. Exceptions to arbitral awards.
- 7123. Judicial review; enforcement.

SUBSECTION IV—ADMINISTRATIVE AND OTHER PROVISIONS

- 7131. Official time.
- 7132. Subpoenas.
- 7133. Compilation and publication of data.
- 7134. Regulations.
- 7135. Continuation of existing laws, recognitions, agreements, and procedures.

SUBSECTION 1—GENERAL PROVISIONS

Sec. 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.

Sec. 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.

Sec. 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 Agency for International Development, 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, the Government Printing Office, and the Smithsonian Institution [1] 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;

(G) the Federal Service Impasses Panel; or

- (H) the United States Secret Service and the United States Secret Service Uniformed Division.
- (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.

Sec. 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 the 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.

Sec. 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) resolves 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.

Sec. 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.

SUBSECTION II—THE RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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

Sec. 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.

Sec. 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 of 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.

Sec. 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 therefore 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.

Sec. 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 based 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 an 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

Sec. 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 manner 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 impasse 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 the 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 fact-finding 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.

Sec. 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.

SUBSECTION III—GRIEVANCES, APPEALS, AND REVIEW

Sec. 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).
- (h) Settlements and awards under this chapter shall be subject to the limitations in section 5596(b)(4) of this title

Sec. 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).

Sec. 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.

SUBSECTION IV—ADMINISTRATIVE AND OTHER PROVISIONS

Sec. 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 non-duty 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.

Sec. 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 subpoena 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.

Sec. 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.

Sec. 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.

Sec. 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.

Responsibilities of the Federal Labor Relations Authority (FLRA)

- Determine the appropriateness of units for labor organization representation in federal sector
- Supervise and conduct elections of exclusive representatives for employees
- Resolve issues relating to duty to bargain in good faith
- Conduct hearings and resolve complaints of unfair labor practices
- Resolve exceptions to arbitrator's awards
- Take such other actions as are necessary and appropriate to effectively administer the responsibilities and provisions of Title 5, United States Code, Chapter 71



Section 2 – Employee Rights

1. To form, join or assist any labor organization
 - a. To act as a representative of the union;
 - b. To present the views of the union to agency heads and other officials of the executive branch of the government or Congress;
 - c. To engage in collective bargaining
2. To refrain from any of these activities

Employees are protected from fear of penalty or reprisal in the exercise of these rights.

Sec. 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.



Section 3 – Union Rights

- To act for and represent bargaining unit employees
- To negotiate with management on matters affecting conditions of employment in the bargaining unit

Sec. 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.



Section 4 – Unfair Labor Practices (ULPs)

The Statute creates rights and obligations on the part of unions, management and employees in a workplace represented by a labor union. If either labor or management fails to perform their obligations to each other, an unfair labor practice (ULP) charge may be filed. Although individuals and agencies may file ULP charges, the vast majority of charges in the federal sector are filed by unions. Historically, approximately 95 percent of all ULP charges have been filed by unions.

“Who, What, Where and How” of Unfair Labor Practices (ULPs)

A ULP may be filed if:

- Labor or management fails to perform their obligations to each other
- Labor or management interferes with the rights each has been given under the Statute
- Employees feel their rights have been threatened by labor or management

Specific examples that may result in the filing of a ULP:

- Agency management to threaten or retaliate against employees for seeking union representation or act as a representative.
- The agency refuses to provide the union with information necessary to fulfill its representational responsibilities.
- A union trying to influence management to discipline employees who did not join the union or refuse to represent employees because they are not union members.
- The union or the agency refuses to bargain with the other in good faith.

The ULP Process

- **Charge is filed**
 - Charge is investigated by the FLRA’s Office of the General Counsel (OGC) through the FLRA’s Regional Offices using a variety of techniques to resolve the charges, short of litigation.
 - Over the last 10 years, approximately 89 percent of all ULP charges filed throughout the federal government were withdrawn, dismissed or settled at this stage.

- **If charge is not resolved, the OGC issues a ULP complaint.**
- If charge is not resolved, the case is prosecuted by the OGC in a trial before the FLRA's Office of Administrative Law Judges (ALJ)
 - The ALJ is appointed by the FLRA
 - Approximately 88 percent of all cases for which a ULP complaint is issued results in settlement without a hearing
- Following the hearing, the ALJ decides whether a ULP was committed and issues a written decision or order, such as:
 - Cease and desist order;
 - Bargaining order;
 - Posting notice to employees;
 - Make whole remedy (including back pay);
 - *Status quo*
- An ALJ decision may be appealed to the three-member Authority by any party through the filing of "exceptions" to the ALJ's decision.
 - On appeal, the FLRA may affirm, modify or reverse the ALJ's Decision and Order in whole or part.
 - The FLRA's decision may be appealed to the appropriate federal courts of appeals.
 - If an appeal is not filed, the decision becomes final.

Management Unfair Labor Practices

Sec. 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.

Union Unfair Labor Practices

Sec. 7116. Unfair labor practices

- (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



Section 5 – Collective Bargaining

Sect. 7103 Definition of collective bargaining

(a)(12) The mutual obligation of representatives of the agency and the exclusive representative to meet at reasonable times and to consult and bargain in a good faith effort to reach agreement on the terms and conditions of employment of bargaining unit employees and to execute a written document reflecting the agreements reached. The parties may not be compelled to agree to a proposal or to make any concessions.”

Bargaining in good faith requires:

- Sincere resolve to reach an agreement
- Having duly authorized negotiators at the bargaining table
- Meeting at reasonable times and places
- Agencies must provide data upon request
- Executing written documents that reflect agreements of parties upon request of either party
- Taking steps to enforce negotiated agreement

Sec. 7114. Representation rights and duties

(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.

Scope of Bargaining**❖ Mandatory Subjects**

Parties are obligated to bargain upon request

❖ Permissive Subjects

Parties have authority to bargain and may choose to bargain, but may not be forced to do so

❖ Prohibited Subjects

Parties have no authority to bargain

Mandatory Subjects of Bargaining (Conditions of Employment)

Sec. 7103. Definitions; application

- (a) For the purpose of this chapter—
- (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;

Prohibited Subjects of Bargaining

Sec. 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.

Procedures the Agency Will Follow in Exercising of Any Management's Rights

Sec. 7106. Management rights

- (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. **(emphasis added)**

Appropriate Arrangements for Employees Adversely Affected by the Exercise of Any Management Right

Sec. 7106. Management rights

- (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. (emphasis added)**

Permissive Subjects of Bargaining

These subjects are negotiable at the election of the agency, per Section 7106(b)(1).

- Numbers, types and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty
- Technology, method and means of performing work

- (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.



Section 6 – Weingarten Meetings

Investigative Interviews (“Weingarten” Meetings)

The CBA provides rights which exceed the law

Sec. 7114. Representation rights and duties

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

(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.

Investigative Meetings/Weingarten Meetings

Key Factors:

- ✓ Management representative (supervisor, manager, FAA security or IG)
- ✓ Bargaining unit employee
- ✓ Investigative interview (Questions and Answers)
- ✓ Employee reasonably believes answers or information provided could result in discipline
- ✓ Employee requests union representation
- ✓ Union selects representative
- ✓ Representative may attend in person or via telephone

Management Alternatives

- Allow union representation
- Stop the meeting

- Assure the employee that no discipline will occur based on employee's answers

Union Representative's Role

- Assist employee in presenting information
- Provide relevant questions and comments
- May ask for short recess in meeting to confer with employee
- Representative cannot interface with meeting or answer questions for the employee



Section 7 – Formal Discussions

Formal Discussions

Sec. 7114. Representation rights and duties

(a) (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

Criteria for Formal Discussions

A formal discussion exists only if all of the following elements are present:

- Discussion (synonymous with meeting) must be formal
- Discussion must be between one or more representatives of the agency and one or more unit employees or their representatives
- Discussion must concern any grievance or any personnel policy or practice or other general condition of employment

Elements of Formality

Use these questions to determine the discussion's level of formality:

- Employees required to attend
- Notes or meeting minutes
- Agenda or meetings plans
- Held in a conference room
- Attendees
- Scheduled in advance
- Significant topic (not “water cooler conversations”)

Rules and Requirements for Formal Discussions

Management

- Notify union representative in advance
- Provide opportunity to attend even if employee(s) does not desire the representative to be present

Union

- Select representative to attend
- Prepare relevant questions and comments



Section 8 – Request for Information

Request for Information

Three Criteria for Release:

1. Be normally maintained by the agency in regular course of business
2. Be reasonably available and necessary
3. Not be a guidance, advice, counsel or training for management relative to collective bargaining

Sec. 7114. Representation rights and duties

- (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—
- (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

Request for Information

5 USC 7114 (b)(4)—“Level The Playing Field”

- Is information needed so union can conduct legitimate representational duty?
 - Active/potential grievance
 - Active/potential ULP
 - Development of bargaining proposals for current or future negotiations
 - Determine if agency is in violation of agreement or law, rule or regulation

- Does any law prohibit disclosure?
 - Privacy Act—balancing act
 - “Sanitization”—remove Privacy Act information from documents
- Is the data presently available in the form requested?
 - If not, different format-must be furnished
- Is the data maintained by any level of the agency (e.g., regional, headquarters, DOT) in regular course of business?
- Is the data readily available?
 - Request too extensive?
 - Too time consuming to collect?
- Does the data constitute advice or guidance to supervisors or managers in the area of labor relations?

No Charge—Free to Union

Union MUST Explain Its “Particular Need” for the Information

- Must be specific
- State reason for request
- Clarification
- Will be grounds for refusal if sufficient need not explained

Agency must respond to union within reasonable time, even if request for information is denied. Union may file a ULP over the agency’s refusal to provide information.



Section 9 – Federal Sector Labor History

A Brief History of Federal Labor Relations

1883: The *Pendleton Act of 1883*, termed the *Civil Service Act*, mandated that wages, hours and other working conditions for federal workers could only be set by Congress.

1902: President Theodore Roosevelt issued the first “gag rule,” which limited the legislative activities of all federal workers.

1913: The *Lloyd-LaFollette Act* was passed after a postal worker was fired for testifying before Congress. It provided federal workers with three basic rights: the right to join a union, which did not claim the right to strike; the right to petition Congress to testify without fear of reprisal; and the right to receive in writing reasons for proposed dismissals or demotions.

1930s: Federal workers were left out of the innovative labor relations laws passed for private sector workers in the *Wagner Act*.

1947: The *Taft-Hartley Act* curtailed some of the rights granted to private-sector workers by the *Wagner Act* and expressly denied federal workers the right to strike and included a substantial penalty for anyone convicted of violating the Act.

1955: The *Taft-Hartley Act of 1947* was amended to provide even stiffer penalties and was made a part of the federal code that covers federal workers.

1961: President John F. Kennedy appointed a Task Force on Employee Relations to make recommendations on a labor relations program for federal workers.

1962: Kennedy issued *Executive Order 10988*, which for the first time directed federal agencies both to recognize and bargain with unions representing federal workers. Through the years, Presidents Lyndon B. Johnson and Richard Nixon appointed special committees to review *Executive Order 10988* and recommend changes.

1969: President Nixon issued *Executive Order 11491*, which retained the key concepts of the Kennedy Order and made a number of important changes, such

as creation of the Federal Labor Relations Council to administer the Order, the Federal Service Impasse Council to help resolve negotiation impasses and the Federal Mediation and Conciliation Service to mediate disputes; provided that binding arbitration and dues check-off could be negotiated; and established procedures to settle disputes arising from Unfair Labor Practices. As a result of these changes, federal workers and their unions grew larger and stronger. In 1963, one year after Kennedy's *Executive Order 10988*, less than 180,000 federal workers were covered under exclusive bargaining units. By 1981, some 1.2 million workers were covered. Under Executive Orders, all of the aforementioned procedures and worker protections were subject to the whims of whoever held the office of president and could be abolished with the stroke of a pen.

1976: On October 13, President Jimmy Carter signed into law *Public Law 95-454, "The Civil Service Reform Act."* Title VII of the Act provides, for the first time, a labor management relations program for federal workers set by law. Prior to the Act, the U.S Civil Service Commission served as defense attorney, prosecutor, judge and jury for employee appeals and labor disputes. *The Civil Service Reform Act* separated these functions by creating several new "statutory bodies," including the Office of Personnel Management (OPM), the Merit Systems Protection Board (MSPB) and the Federal Labor Relations Authority (FLRA).



Section 10 – LMR/Definitions

A

Adverse Impact—Change in working conditions that works to the disadvantage of employees. Depends on the occurrence of a chain of events and are not necessarily inevitable (reasonably foreseeable). Generally involves more than merely a hypothetical or speculative concern.

Agency Head Review—The action taken by the head of an agency, or his/her designee, within the 30-day period of an agreement being reached between representatives of the agency and union to determine whether any provisions of the agreement reached “conflicts” with law or government-wide rules and regulations, including those matters under 5 USC 7106(a), essentially, a negotiability determination.

Appropriate Arrangements—Arrangements for employees adversely (detrimentally) affected by the exercise of a management right or rights contained in 5 USC 7106(a) and (b)(1). The purposes of such arrangements are to address or compensate for the “actual anticipated” adverse effects caused by the exercise of a management right or rights. To be appropriate, an arrangement proposed for employees much concern affected conditions of employment resulting from the exercise of those rights, cannot conflict with law, government-wide rules or regulations, excessively interfere with the exercising of a management right or rights or concern matters within the employee(s) control.

B

Bargaining—The performance of the mutual obligation of the representatives of the agency and union to meet at reasonable times, consult and bargain in a good faith effort to reach agreement with respect to the conditions of employment affecting bargaining unit employees and, upon request, to execute a written document. (Does not compel either party to agree to a proposal or make a concession.)

C

Conditions of Employment—Personnel policies, practices and matters whether established by rule, regulation or otherwise (e.g., past practice) except those relating to political activities prohibited under 5 USC Chapter 73, subchapter III (e.g., concerning the engaging in political activities (a) while on duty, (b) while using any vehicle owned or leased by the Government, or (c) while off duty if Government funds are used to pay for such activities); relating to the classification of any position; or “specifically” provided for by Federal statute (law) or that does not pertain to employee “working conditions.”

D

Doctrine—A rule, principle, theory or tenet (fundamental principle) of the law (e.g., Covered-by Doctrine, Waiver Doctrine, etc.).

Duty to Bargain—Encompasses bargaining to the point of obtaining a collective bargaining agreement; bargaining over ongoing changes in working conditions (midterm) that are not clearly covered-by the collective bargaining agreement or previously waived by the union; and bargaining over matters initiated by a union before, during (midterm covered-by and waiver tests apply) or after the term of a collective bargaining agreement.

F

Federal Service Impasses Panel—The role of the Federal Service Impasses Panel is to provide federal agencies and unions representing federal employees assistance in resolving impasses arising from negotiations over conditions of employment. The FSIP's address is 607 14th Street N.W., Washington, D.C. 20424-0001. If bargaining between the parties and mediation assistance from the Federal Mediation and Conciliation Service prove unsuccessful, the panel, as an entity within the Federal Labor Relations Authority, has authority under section 7119 of the Statute to recommend procedures, such as arbitration, for the resolution of an impasse. It also provides direct assistance to the parties through fact-finding, written submissions, or other methods it deems appropriate. If these efforts do not lead to a settlement, the panel may take whatever action is necessary to resolve the impasse. Such final action, typically an arbitration award or a decision and order of the panel itself, is binding on the parties during the term of their agreement unless they agree otherwise. If the parties to a negotiation impasse agree to adopt a procedure for using a private arbitrator, the procedure must be approved by the panel.

The Statute also assigns special third-party functions to the Federal Mediation and Conciliation Service (FMCS) and to the Assistant Secretary of Labor the Office of the American Workplace, an agency and entity outside the FLRA. FMCS provides services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses, prior to or in conjunction with the panel. The assistant secretary enforces the standards of conduct for unions—standards that ensure democratic process and fiscal integrity.

Formal Discussion—As to the substance of formal meetings, they include discussions about grievances, general rules or policies at the workplace and exclude discussions with individuals about specific work practices. Personnel policies or practices are to involve general rules applicable to agency personnel, not discrete actions concerning individual employees.

G

Good Faith Bargaining—The overall behavior and effort on the part of an agency and union during the negotiations process. This includes the obligation on the part of an agency and union to:

- approach negotiations with a sincere resolve to reach agreement;
- send duly authorized representatives prepared to discuss and negotiate on any condition of employment;
- meet at reasonable times and convenient places as frequently as necessary and to avoid unnecessary delays;
- execute, upon request, a written document incorporating the agreed terms, and to take such steps as are necessary to implement the agreement.

And in the case of an agency, to furnish to the union, upon request, and, to the extent not prohibited by law, data

- which is normally maintained 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 collective bargaining; and
- which does not constitute guidance, advice, counsel or training provided for management officials or supervisors relating to collective bargaining.

Government-Wide Rule or Regulation—Regulations codified in the Code of Federal Regulations (CFR), an administrative interpretation of such regulations or an official declaration of policy, which applies to the Federal civilian work force as a whole and are binding on agencies and officials to which they apply.

Grievance—A complaint by an employee, the Union or the Agency concerning any aspect of the employment relationship, including a violation of any claimed violation, misinterpretation or misapplication of law, rule or regulation affecting conditions of employment. A grievance can also concern a violation of 5 USC 7116 (Unfair Labor Practices). See Unfair Labor Practices.

Includes any complaint:

- by an employee concerning any matter relating to the employment of the employee;
- by the Union concerning any matter relating to the employment of any unit employee; or
- by any employee, labor organization, or agency concerning:
 - the effect or 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.

Grievance Bar—A claim by either party to a collective bargaining relationship that a statutory appeal was previously filed involving the same facts and theories alleged in a subsequently filed grievance.

I

Impact and Implementation Bargaining—The duty to bargain after a decision has been made concerning the exercising of a management right or rights under 5 USC 7106(a) and 7106(b)(1).

Interference—The effect of a bargaining proposal on the exercising of a management right.

- **Direct Interference**—A proposal that prescribes preconditions that precludes management's ability to exercise management rights.
- **Excessive Interference**—A proposal that is inappropriate as an arrangement for employees adversely impacted by the exercises of management rights.

M

Mandatory Subjects of Bargaining—Those matters that the agency must bargain over upon receipt of a union's request, such as conditions of employment not otherwise waived by the union or covered by the parties' agreement.

Midterm Bargaining—Midterm bargaining may be required due to a change in working conditions initiated by an agency or in response to a union initiated request to bargain concerning a condition of employment. It is the fulfillment of either party's duty to bargain during the term of a collective bargaining agreement.

N

Negotiability Determination—A decision reached by the Federal Labor Relations Authority on a request for expedited review of negotiability issues. Unions in disputes with agencies concerning what matters may be collectively bargained may file negotiability appeals, technically called petitions for review. A negotiability determination may be rendered when an agency claims a matter is non-negotiable or there is no duty to bargain. Matters that involve such allegations that do not involve the actual or contemplated changes in working conditions can only be filed under the negotiability appeal procedure.

Negotiation Impasse—If there are no disputes over the essential obligations of bargaining, assuming the parties have bargained in good faith but unsuccessfully over a negotiable proposal, it is the point where the parties are unable to reach an agreement.

No-Duty to Bargain—A term used to indicate the subject matter of a management change or union initiated proposal involves a condition of employment for affected employees that has been previously waived by the union or is covered by the parties' collective bargaining agreement.

Non-Negotiable—A term used to indicate the subject matter of a management change does not concern a condition of employment for affected employees, is a reserved management right or because the matter is permissively negotiable and the agency has

elected not to bargain. Additionally, the term applies to a union proposal that does not concern a condition of employment for affected employees, is in conflict with law, Government-wide rule or regulation or excessively interferes with a reserved management right.

O

Obligation to Bargain—The right to bargain is affirmative; if management does nothing, the union may require negotiations over working conditions. The right to bargain is also responsive; when management changes working conditions, the changes may lead to negotiations. That obligation is fulfilled through negotiations leading to a basic agreement, mid-term bargaining, and bargaining over impact and implementation decisions made within the ambit of management rights. In order to meet this obligation, management has the duty to give the exclusive bargaining representative advance notice of the proposed implementation of decisions and provide the union with an opportunity to participate in impact and implementation bargaining. The union must then act if it is to act at all.

P

Past Practice—A workplace practice that is clearly understood, exists with the consent or knowledge of both parties, and followed by either party for a reasonably lengthy period of time as a fixed and established procedure.

Permissive Subjects of Bargaining—Includes those matters that may be bargained at the agency's discretion. At the agency's election it may bargain over those matters contained in 5 USC 7106(b)(1), matters previously waived by the union or covered by the parties' collective bargaining agreement and matters that do not constitute conditions of employment. Excluded from permissive subjects of bargaining are reserved as management rights.

Prohibited Subjects of Bargaining—Includes those matters reserved as management rights pursuant to 5 USC 7106(a).

S

Substance Bargaining—This concerns bargaining over whether an action by the agency to change the conditions of employment affecting employee working conditions will or will not be made. Substance bargaining rather than impact and implementation bargaining is required anytime the subject matter involves a condition of employment. When an agency has discretion under the law to change or not change employee working conditions, any bargaining concerning whether the change will be made requires substance bargaining (e.g., over the decision itself or over the procedures or appropriate arrangements concerning a decision already made if the matter concerns a management right or is not a condition of employment).

U

Unfair Labor Practice (ULP)—A ULP is an allegation that management or the union has violated the provisions of 5 USC 7116. Unlike grievances, a ULP cannot be filed concerning a contract violation or a violation of any other law. A violation of the contract or a violation of any other law must be filed as a grievance or another statutory appeal (e.g., EEO complaint).

ULP Bar—A claim by either party to a collective bargaining relationship that a grievance was previously filed involving the same facts and theories alleged in a subsequently filed ULP.

W

Waiver Doctrine—A waiver of bargaining rights may be established by an expressed agreement or bargaining history. Further, any such waiver must be clear and unmistakable.

- *Expressed Agreement*—A union may contractually agree to waive its right to initiate bargaining in general by a “zipper clause.” That is, a clause intended to waive the obligation to bargain during the term of the agreement on matters not contained in the agreement or by specifying a particular subject matter that is precluded from further bargaining during the term of the agreement.
- *Clear and Unmistakable*—A waiver may also be evidenced by bargaining history when the subject of mid-term bargaining concerns matters which were discussed in contract negotiations but which were not specifically covered in the resulting contract. In this category, a waiver may be found where the subject matter of the proposal offered by the union during mid-term negotiations was fully discussed and explored by the parties at the bargaining table. For example, where a union sought to bargain over a subject matter, but later withdrew its proposal in exchange for another provision, a waiver of the union’s right to bargain over the subject matter that was withdrawn would be found. The particular words of proposals offered during contract and mid-term negotiations need not be identical for a waiver to exist. In determining whether a contract provision constitutes a clear and unmistakable waiver, the Authority examines the wording of the provision at issue as well as other relevant provisions of the contract, bargaining history and past practice.

Weingarten Meeting—An exclusive representative shall be given the opportunity to be represented at any examination of a unit employee by an agency representative in connection with an investigation if the employee reasonably believes that discipline may result from the examination and requests representation. An employee who is questioned during an investigatory examination that may result in discipline may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors. Thus, the union representative must be free to help clarify the issues or facts, or to suggest other employees who may have knowledge of them.

Working Condition—The existing environment in which employees perform their duties. This includes such things as access to and from the facility, beginning at the entrance to the grounds, the type of equipment used and surrounding they are accustomed to (e.g., ceilings, walls, paint, carpet, temperature, lighting, services such as coffee, popcorn, and

snacks), rules, regulations and procedures relating to any employee activity, right or benefit (e.g., schedules, breaks, training, discipline, conduct and performance standards, attire, parking, entertainment). Any action taken which changes a right, benefit, privilege, etc., currently enjoyed by employees is a change in working conditions. However, changes in working conditions may or may not be subject to negotiation. See Conditions of Employment.