



PASS Representative Training

Welcome PASS Representatives!

- ▶ Thank you for taking the time and effort to serve as a PASS rep.
- ▶ You are serving a vital role in PASS's labor-management structure.
- ▶ Introductions:
 - What office are you serving as a rep? What type of rep are you? Why did you become a rep?
 - What is your chapter?
 - How are we going to remember you?





PASS REP TRAINING:

An Overview

Why Are You Here?

- ▶ You are a PASS representative under Article 2 of the PASS/FAA collective bargaining agreement (CBA).
- ▶ The contract entitles you to 40 hours of representative training under Article 2, Section 10.



Your Role as a PASS Rep

As a PASS rep, you serve many roles, including:

- ▶ Enforcing and administering the CBA.
- ▶ Applying the Federal Service Labor-Management Relations Statute.
- ▶ Growing membership! Membership in PASS is 37% (4,097 out of 11,087); ATO is 45%, AVS is 26%. Region 1= 54%, Region 2 = 45%, Region 3 = 29%, Region 5 = 27%. Take what you learn this week back home and get new members.
- ▶ Joining the PASS PAC!



Leadership

You are a leader in PASS

- ▶ Motivate and inspire
- ▶ Listen to others - I know you can talk!
- ▶ Purveyor of resources and conveyer of support
- ▶ Integrity
- ▶ Avoid judging - see the points of view of others
- ▶ Be yourself



Your Tools

Tools available to PASS reps include:

- ▶ PASS representative structure
- ▶ PASS national office staff
- ▶ Training
- ▶ Open and early communication with management
- ▶ Engaged bargaining unit



Curriculum

- ▶ Our History
- ▶ Executive Orders and Partnership
- ▶ Federal Service Labor-Management Relations Statute
- ▶ FAA Personnel Reform
- ▶ Employee/Union Rights Under the Statute
- ▶ Requests for Information
- ▶ Collective Bargaining





OUR HISTORY

Federal Employee Unions

Civil Service Reform Act of 1978

- ▶ First significant change to the civil service since the Pendleton Act in 1881 which eliminated the “spoils system”. Appointments to civil service positions were doled out by the incoming presidents until the assassination of President Garfield.
- ▶ Established the U.S. Office of Personnel Management (OPM).
- ▶ Established the Merit Systems Protection Board (MSPB).
- ▶ Established the Office of Special Counsel (OSC) within the MSPB.



Federal Employee Unions

Civil Service Reform Act of 1978

- ▶ Most important to you, it established the Federal Labor Relations Authority (FLRA).
- ▶ Established the Federal Service Impasses Panel (FSIP) to settle bargaining disputes that reach impasse.
- ▶ Title 5, Chapter 71, of the U.S. Code defines much of your relationship with management.



PASS History

- ▶ Formed in 1977, PASS is the oldest FAA union. Our members are employees of the Federal Aviation Administration and Department of Defense.
- ▶ PASS was founded on February 17, 1977, by a group of over 50 FAA technicians in Chicago.
- ▶ In 1991, Flight Standards voted in favor of joining PASS. By September of that year, nearly 300 FS employees had joined. By the end of the decade, employees in MIDO joined PASS as well.





EXECUTIVE ORDERS

Executive Orders

U.S. presidents issue Executive Orders to help officers and agencies of the executive branch manage the operations within the federal government itself. Executive Orders have the full force of law.

- ▶ Executive Order 12871: Issued By President Clinton in 1993, established labor-management committees and ordered agencies to bargain over “permissive subjects” as described in 5 USC Sec. 7106(b)(1). Rescinded by President George W. Bush.
- ▶ Executive Order 13522: This reestablished labor-management committees and promoted partnership. This is the root for PDI (pre-decisional input).



Executive Order 14003

- ▶ Proclaimed it is the policy of the administration to encourage union organizing and collective bargaining.
- ▶ Revoked previous EOs issued by previous administration that: created Schedule F (specifically created to eliminate due process and make it easier to remove employees; limiting the negotiating of official time; place artificial timeline on bargaining; streamline removal procedures; limiting the ability to resolve discipline.)
- ▶ “The head of each agency subject to the provisions of chapter 71 of title 5, United States Code, shall elect to negotiate over the subject set forth in 5 USC 7106(b)(1) and shall instruct subordinate officials to do the same.”





FEDERAL LABOR RELATIONS STATUTE

Private Sector Unionizing

Model for Public Sector Unionizing

- ▶ In 1935 the National Labor Relations Act, or the Wagner Act.
 - ▶ Expressly excluded federal employees.
 - ▶ Right to join unions of their choosing;
 - ▶ Right to collectively bargain using representatives of their own choosing;
 - ▶ Right to strike;
 - ▶ Set up the National Labor Relations Board;
 - ▶ Establish ability to file unfair labor practices to enforce.
- ▶ Modified by the Taft-Hartley Act:
 - ▶ Injunctions preventing a strike if endanger public safety or health;
 - ▶ List of unfair labor practices that could be committed by unions;
 - ▶ States may prohibit closed shops, root of "right-to-work" laws that prohibit union shops on a state-by-state basis.



Private Sector Unionizing

Railway Labor Act

- ▶ Governs labor relations in the railroad and airline industries.
- ▶ Created the National Mediation Board (NMB).
- ▶ No strike or lockout until exhaust all mediation efforts and released by the NMB.
- ▶ Federal courts can enjoin a strike if mediation not exhausted or if over issue not “major” (modifying CBA) versus “minor” (interpretation of CBA).



Federal Labor Relations Statute

The FLRA is comprised of four distinct components:

1. The Federal Labor Relations Authority
2. The General Counsel of the Authority
3. The Federal Service Impasses Panel (resolves impasses in negotiations)
4. The Office of Administrative Law Judges



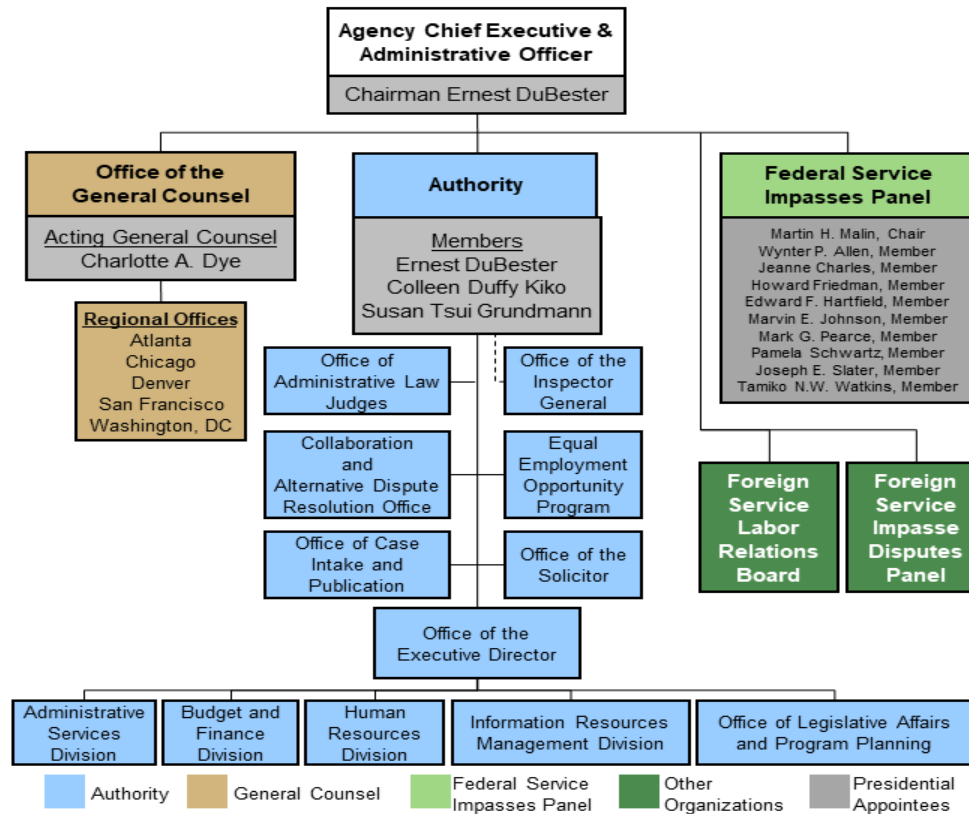
Federal Labor Relations Statute

FLRA responsibilities include:

- ▶ Determine the appropriateness of bargaining units.
- ▶ Evaluate Unfair Labor Practices.
- ▶ Resolve bargaining disputes.
- ▶ Handle exceptions, or appeals, to arbitrator's awards.
- ▶ Protect your rights.



Federal Labor Relations Authority





FAA PERSONNEL REFORM

FAA Personnel Reform

FAA Personnel Management System

- ▶ In April 1996, the Congress passed Public Law 104-264, amending Title 49 Subtitle VII of the United States Code.
- ▶ Section 40122 of Title 49 exempted the FAA from most of the provisions of Title 5, which provides most personnel and human resource laws applicable to most other government employees.



FAA Personnel Reform

CBA Article 74; Exceptions under Title 5,
reiterated in Article 74 (still covered)

- ▶ Whistleblower Protection (Section 2302)
- ▶ Veterans Preference (Sections 3308-3320)
- ▶ Labor Management Relations (Chapter 71)
- ▶ Anti-discrimination (Section 7204)
- ▶ Suitability, Security and Conduct (Chapter 73) (Hatch Act)
- ▶ Compensation for Work Injury (Chapter 81)
- ▶ Retirement (Chapters 83 and 84)
- ▶ Unemployment Compensation (Chapter 85)
- ▶ Insurance Coverage (Chapter 89)
- ▶ MSPB (sections 1204, 1211-1218, 1221, and 7701-7703)



Additional Impasse Process

- ▶ FSIP jurisdiction regarding issues covered by FAA personnel reform.
- ▶ Title 49 provides an impasse process.





EMPLOYEE RIGHTS

Employee Rights 7102

- ▶ 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.



Employee Rights 7102

- ▶ An employee who is denied these rights by either the employer or the exclusive representative of a group of employees it represents may file an unfair labor practice against that party.
- ▶ This includes the union and falls under the Union's Duty of Fair Representation (DFR).





UNION RIGHTS

Union Rights Under the Statute

§ 7114. Representation rights and duties

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.





COLLECTIVE BARGAINING

Our World of Negotiating

- ▶ Legal right to negotiate over conditions of employment.
- ▶ What's a condition of employment?
 - Personnel policies, practices, and matters affecting working conditions regardless if covered by agency policy.
 - Excludes things covered by law and classification of a position.



Collective Bargaining

5 USC Sec. 7103 (a)(12)

- ▶ Mutual obligation of the union and agency to:
 - ▶ To meet at reasonable times
 - ▶ To bargain in good faith
 - ▶ To execute a written agreement
 - ▶ Not compelled to agree with the other's proposal or make concessions.

The duty to bargain in good faith is the obligation to approach negotiations with sincerity to reach agreement at reasonable times, convenient locations and as frequently as necessary.



The Collective Bargaining Agreement

The PASS collective bargaining agreement (CBA) is a compilation of negotiable provisions that have been agreed to by the employer and the union for a specified term.

- ▶ In the case of the AVS bargaining unit, the term of the agreement is four years.
- ▶ For ATO bargaining unit, the term of the agreement is for five years.
- ▶ The contract is broken down into various subjects in the Table of Contents.
- ▶ These provisions cover the subjects in their entirety and cannot be modified to either detract from or expand upon the agreed terms. (Article 70, Section 1).



Article 69: Effect of Agreement

- ▶ Section 1.
 - CBA supersedes agency and DOT policies.
- ▶ Section 3.
 - Fair and equitable.



The Collective Bargaining Agreement

- ▶ The employer is required to bargain with the union over certain mandatory subjects.
- ▶ If the issue is in the CBA, then it's considered "covered by." There are no negotiations over issues already in the CBA.
- ▶ If not covered by the CBA, is there an agency policy, government-wide policy or law?
- ▶ Any change to working conditions not covered by the CBA is subject to bargaining. This is known as mid-term bargaining and is covered under Article 70.
- ▶ Number one error: negotiating over an issue already found in the CBA!



The Collective Bargaining Agreement

- ▶ Mid-Term Bargaining: A legal term of art that defines the process for bargaining over terms not covered by a collective bargaining agreement between the parties (the agency and the union).
- ▶ Under Article 70 of the PASS/FAA CBA, any matter not expressly contained in the CBA shall not be changed by the agency prior to providing notice and completing negotiations with the union in accordance with the applicable law 5 USC section 7106 b(2), (3).



Article 70: Mid-Term Bargaining

► Section 1.

- ...personnel policies, practices and matters affecting working conditions, not expressly contained in this Agreement, shall not be changed by the Agency without prior notice to, and negotiation with, the Union....

► Section 2.

- 30 days advance written notice of proposed change. Notice provided at the proper level. Notice needs to reference Article 70. The Union has 15 days to request a briefing. If requested, the meeting needs to be held within 10 days of the Union's request. The Union may submit written proposals within 30 days of original notice.



Article 70: Mid-Term Bargaining

- ▶ Section 3.
 - Process for resolving bargaining disputes if mutual agreement is to elevate to the next level.
- ▶ Section 4.
 - The parties must have authorized representatives at the table and agreements must be in writing.
- ▶ Section 5.
 - The Union may initiate bargaining.
- ▶ Section 6.
 - Equal number of representatives for bargaining.



Article 70: Mid-Term Bargaining

- ▶ Section 7.
 - Ground rules can be negotiated.
- ▶ Section 8.
 - “Covered by doctrine,” if expressly contained in the CBA, no negotiations. If not, no bar to bargaining.
- ▶ Section 9.
 - All agreements preceding this CBA are gone.



Prohibited Subjects of Bargaining

- ▶ 5 USC Section 7106(a) of the Statute labels the following as management rights:
 - To determine the mission, budget, organization, number of employees, and internal security practices of the agency;
 - To hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
 - To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;
 - With respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or any other appropriate source; and
 - To take whatever actions may be necessary to carry out the agency mission during emergencies.



Prohibited Subjects of Bargaining

- ▶ It also means that any proposal presented by a labor organization that would prevent management from exercising these rights would be deemed to be non-negotiable.
- ▶ It means that the union cannot prevent management from doing these things. It is their job.



Appropriate Arrangements

Full Statute shows the “good news” about those prohibited subjects of bargaining.

- ▶ “Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—”
- ▶ 7106 (b)(2) and (3) state: “Nothing in this section shall preclude any agency and any labor organization from negotiating—
“(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.”



Appropriate Arrangements

- ▶ 7106 (b)(2) Implementation: “procedures which management officials of the agency will observe in exercising any authority under this section.”
- Although management has rights under 7106(a), how those rights are exercised are negotiable under the Statute.
- We can bargain over procedures that management will follow in the exercise of those rights.



Appropriate Arrangements

- ▶ 7106 (b)(3) Impact: “appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.”
- In this case, the union proposes appropriate arrangements for employees it represents if management exercises a right that costs an employee something tangible, such as pay or a benefit.
- We can negotiate arrangements to ameliorate the negative impacts on employees.
- We can submit proposals to mitigate the impacts to employees who are adversely affected by the exercise of management rights.



Proposals

FLRA determines if negotiable

Proposals

In order for a proposal to be negotiable:

- it must not excessively interfere with management's rights
- it must be tailored - only applies to the employees being impacted
- it must address the specific harm caused by the exercise of management's right - you can't propose to get a new TV in the break room to address a change in a leave policy
- the benefits to the employee must outweigh any intrusion on management's rights



Permissive Subjects of Bargaining

- ▶ 7106 (b)(1) states: “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;”
- ▶ Discretionary agency authority.



Past Practice

- ▶ Must be condition of employment.
- ▶ Must not conflict with existing law, etc.
- ▶ Practice must be consistently exercised over significant period of time.
- ▶ Followed by both parties or followed by one and not challenged by the other.
- ▶ Cannot be changed without bargaining.
- ▶ FAILURE TO GIVE NOTICE AND BARGAIN OVER A CHANGE IN A PAST PRACTICE IS AN UNFAIR LABOR PRACTICE.





REQUESTS FOR INFORMATION

Requests for Information

- ▶ 5 USC Sec. 7114 (b)(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.



Requests for Information

CBA Article 4.

- ▶ Section 5. Information or documents that are available to the Union electronically on either the FAA Intranet or FAA links to the Internet sites meets the Agency's obligation under Section 7114(b)(4) of the Statute, provided the Agency identifies the specific location of the information by providing the Union with the applicable links to the information or documents.
- ▶ Section 6. If a Union representative is denied permission to take photographs of an FAA facility in the course of his/her representational activities, the Union representative, upon request, will be provided with an explanation of the reasons for the Agency's decision.



Requests for Information

- ▶ Request must be supported with a particularized need. Why do you need the info?
- ▶ Good reason: The information is necessary to support a grievance, unfair labor practice or bargaining.
- ▶ The agency may redact certain information that discloses personal information protected by the Privacy Act.



Requests for Information

- ▶ **PARTICULARIZED NEED:** Specific statements explaining exactly why the union needs the requested information. (Explain exactly how the union intends to use the requested information and how that use of the information relates to the union's role as the exclusive representative. Include a specific statement for each type of information requested, as well as for the time period(s) encompassed by the request and the need for personal identifiers, if applicable.)
- ▶ **DATE:** Date of the information request.
- ▶ **REQUESTER:** Name of the requesting union.



Requests for Information

- ▶ UNION CONTACT: Name, position, mailing address and phone number of the union contact submitting the request.
- ▶ AGENCY CONTACT: Name, position, mailing address and/or phone number of the agency representative to whom the request is being made.
- ▶ INFORMATION REQUESTED: Description of information requested. (Include whether personal identifiers are included or may be deleted, such as names, Social Security numbers or other matters identifying individual employees).

