

CHAPTER 18

LABOR/MANAGEMENT

RELATIONS

NOTE: This chapter should be read in conjunction with local activity instructions and with any negotiated agreements between your activity and an exclusively recognized labor organization. Contract language will generally take precedence over conflicting provisions in this manual. Areas of uncertainty should be discussed with the Human Resources Office.

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RELATIONS BETWEEN LABOR AND MANAGEMENT

1. PURPOSE

The Federal Service Labor-Management Relations Statute, 5 USC Chapter 71, provides employees the right to bargain collectively consistent with the requirement for an effective and efficient government. Experience indicates that collective bargaining can contribute to effective conduct of public business by promoting informed decision making. In addition,



positive labor-management relations facilitates the amicable settlement of disputes between employees and their employers involving conditions of employment. When a union has been chosen to represent employees, no other individual or group can act for the employees in matters involving personnel policies, practices, or working conditions. Appendix 18A lists activities serviced by your HRO whose employees have elected such representation.

2. DEFINITIONS

BARGAINING UNIT

- A group of employees who share a community of interest, and who are collectively represented by a labor organization. A detailed description of each bargaining unit can be found in the collective bargaining agreement for that unit.
- Supervisors/managers, HR professionals, internal security personnel, and confidential employees are excluded from union representation.

COLLECTIVE BARGAINING AGREEMENT

A contract between a labor organization and activity management entered into as a result of collective bargaining.

FEDERAL LABOR RELATIONS AUTHORITY (FLRA)

- Responsible for administration of labor management relations in the government.
- Determines appropriateness of units for labor organization representation.
- Conducts hearings and resolves complaints of unfair labor practices.

FORMAL DISCUSSION

A discussion or meeting involving any number of management representatives and one or more bargaining unit employees concerning any grievance or any personnel policy or practices or other general conditions of employment. The exclusive representative must be given an opportunity to be represented at these meetings.

IMPACT AND IMPLEMENTATION BARGAINING

A form of mid-term bargaining over the terms of implementing a change where the change itself is non-negotiable. Such changes may be caused by a change in law or regulation, or by the exercise of a reserved management right. Impact and implementation bargaining is limited in scope to (a) procedures management will follow in implementing a change, and (b) appropriate arrangements for employees adversely affected by the change.

HUMAN RESOURCES MANUAL

LABOR ORGANIZATION

An organization (union) recognized by the Federal Labor Relations Authority by which employees deal collectively with management concerning grievances, personnel policies and practices, or other matters affecting working conditions.

OFFICIAL TIME

- Reasonable duty time spent by employees of an activity acting on behalf of the exclusive representative to perform representational functions, e.g. grievance handling.
- Should not be used for conducting internal union business, e.g. soliciting new members.

UNFAIR LABOR PRACTICES

Actions on the part of the activity management or labor organization, which violate rights, granted under the Federal Service Labor-Management Relations Statute.

“WEINGARTEN” MEETING

An investigatory meeting called by management to examine a bargaining unit employee. The employee is entitled to union representation if the employee asks for such assistance and reasonable fears disciplinary action may be taken.

3. RESPONSIBILITIES



a. Activity Heads

For the administration of the labor-management relations program within their commands. Management must recognize the rights of employees and labor organizations. Consideration will be given to the views of a recognized labor organization in the formulation, development and implementation of policies and practices relating to working conditions of employees.

b. HRO

Principal point of contact for the activity's federal sector labor relations matters. Responsibilities include the following:

- 1) Serves as the spokesperson for the administration of negotiated agreements with the union and for interpreting and applying various sections of the labor management relations law, case law and governing regulations. Correspondence and proposed directives involving personnel policies, matters, and practices affecting working conditions will be provided to the Human Resources Office for review prior to issuance.
- 2) Provides liaison with activity officials and union representatives and related third-party groups. All contacts or correspondence from such organizations will be forwarded to the Human Resources Office for action. Arranges for access of labor organization representatives to meet with activity management officials and employees.
- 3) Attends meetings between labor organization, related third-party groups, and activity management officials. A Human Resources Office representative should attend scheduled meetings between management officials and union representatives.

HUMAN RESOURCES MANUAL

4. COVERAGE

Only certain employees are eligible to be included in a bargaining unit and represented by a union. Supervisors, managers, personnel specialists, internal security personnel, and confidential employees cannot be included in a bargaining unit.

5. BASIC RIGHTS UNDER THE LAW

a. The Federal Service Labor–Management Relations Statute specifies rights that are granted to employees, unions, and management. The law expressed the intent that employees, unions, and management will exercise these rights in such a way as to promote the effective and efficient operation of the activity.

c. Employee Rights

- To form, join or assist any labor organization, or to refrain from any such activity freely and without fear of penalty or reprisal.
- To act for a labor organization in the capacity of a representative to present labor organization views to management.
- To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees.
- Union representation when filing grievances.
- All employees in the bargaining unit are entitled to receive union representation and assistance in dealing with management, regardless of personal union membership.

d. Union Rights

- Exclusive representative of the employee in the unit it represents.
- To negotiate a collective bargaining agreement with management and to bargain over changes in conditions of employment, which the employer wishes to make.
- To be represented at formal discussions and investigatory interviews of employees in the unit.
- Entitled to information which is normally maintained by the employer and which is reasonably available and necessary for the union to carry out its responsibilities.
- Engage in informational picketing as long as the picketing does not interfere with the employer's operation. Labor organizations representing federal employees may not strike or condone striking by employees in the unit.
- Entitled to reasonable official time to carry out their rights and responsibilities under the law. However, union officials may not conduct internal union business, e.g. soliciting members, during official time.

e. Management Rights

(In accordance with applicable laws.)

- Set rules or policies which are not arbitrary, capricious, nor an abuse of discretion or authority. Prescribe how employees should behave and how they will be managed.
- Determine the mission, budget, organization, number of employees, and internal security practices.
- Hire, assign, direct, layoff, and retain employees
- Take employee disciplinary action, including suspend, remove, or reduce in grade or pay.
- Assign work, make determinations with respect to contracting out.
- Determine the personnel by which agency operations shall be conducted
- With respect to filling positions, make selections for appointments from among properly ranked and certified candidates for promotion or any other appropriate source.
- Take whatever actions may be necessary to carry out the agency mission during emergencies.
- Free to express any personal view, argument, or opinion, and to correct the record with respect to any false or misleading statements as long as the expressions do not contain a threat of reprisal, promise of benefit, or anti-union remarks.

6. NEGOTIATIONS

- a. The union may exercise its right to request negotiations at contract expiration and when advised of a proposed change in a condition of employment throughout the life of the agreement. When agreement cannot be reached, the parties are at impasse and a mediator may be called for assistance. Should mediation fail, the positions of the parties are forwarded to the Federal Service Impasses Panel for resolution.

b. Collective Bargaining Agreement

The union and management negotiate a labor agreement concerning the personnel policies and working conditions for represented employees. The agreement remains in effect for a specified period of time, generally three years. Prior to meeting at the negotiating table, the parties designate a negotiating team, which includes a chief spokesperson. Generally speaking, each negotiating team has an equal number of individuals who are in a pay status. The parties exchange proposals and may establish ground rules for the negotiations. Negotiated agreements typically include procedures for promotions, discipline, reassignments, leave scheduling, shift assignments, and overtime scheduling. Agreements may also include other benefits for bargaining unit employees such as temporary promotions, parking assignments, and flexible work hours. All labor agreements must include a grievance procedure, which includes binding arbitration as the final step. Managers and supervisors must be aware of and comply with the provisions of the negotiated agreement.

c. Changes in Conditions of Employment During the Life of the Agreement

- 1) In a labor relationship, negotiations may be continuous. Remember, the collective bargaining agreement establishes terms and conditions of employment for matters contained in that agreement, but, management may have a need to change some personnel practices or working conditions during the life of the agreement. A change in policy at a higher level, a change in work process or technology, or differences in composition of the workforce, etc, may require change. Management must provide the union an opportunity to negotiate on any change in conditions of employment management wishes to make.
- 2) Obligation to notify the union is triggered if answers to the following questions are “yes” or “probably”:
 - Are the employees affected by the change covered by the bargaining unit?
 - Will the decision change an existing rule or way of doing things?
 - Will the decision alter the working conditions or personnel policies and practices of unit employees?
 - Will the change significantly affect employees’ working conditions?
- 3) Where union notification is required, management must notify the union of the intended change **before** putting it into effect. Do not notify the employees first or the employees and the union at the same time. Notification to the union should specify what management intends to do and when. Making the change without notification to the union produces the vast majority of all unfair labor practice charges and creates time-consuming disputes that adversely affect labor-management relations. Consult the negotiated agreement for specific procedures and time frames for notifying the union of proposed changes.

7. MEETINGS WITH EMPLOYEES

The law specifies two situations in which the union has a right to be present during discussions management officials have with bargaining unit employees:

a. Formal Meetings

- 1) The law provides the union an opportunity to be present when a management representative discusses conditions of employment or a grievance with one or more unit employees. The idea behind this requirement is quite simple. Since the union is responsible for working out and enforcing conditions of employment with management, it should be allowed to sit in when managers discuss such matters with the employees it represents.
- 2) If the following four elements are present, the meeting is considered a formal discussion and the union must be provided the opportunity to be present.
 - A discussion (meeting)
 - Formal meeting
 - Meeting between one or more management officials and one or more bargaining unit employees or their union representatives
 - Meeting concerning any grievance or other personnel policy, practice, or general working condition

- 3) Whether the employees want the union to be present at the meeting is not important. The right to attend formal meetings is a right given to the union by law. It is not a right that may be given away by individual employees.

4) General rules for dealing with formal meetings

- a) When a formal meeting is scheduled with bargaining unit employees and management plans to discuss conditions of employment (e.g. shift rotations, rearranging office space), management must invite a union representative to attend. If the union representative does not show up for the meeting, management is free to proceed with the meeting. However, management should document the invitation and subsequent lack of attendance by the representative.
- b) When a meeting is scheduled and management does not plan to discuss conditions of employment, union notification is optional.
- c) When discussions of working conditions arise unexpectedly in a meeting with employees and the union had not been previously notified, the meeting should be stopped or those issues tabled until proper union notice has been given. A union representative is entitled to take an active role, but not to the extent of taking over or disrupting the meeting. The union representative may ask questions related to the topics under discussion, may state the union's opinions or views on such matters, and may disagree with the points being made in the meeting by management officials. The representative may not, however, engage in grossly disrespectful or antagonistic behavior.

b. Investigative or Weingarten Meetings

If someone from management is **examining** a person from the bargaining unit as part of **an investigation: and**

The employee believes that he or she **could face possible disciplinary action** as a result of the investigation; **and**

The employee requests union **representation; then**

Reasonably delay the meeting until union representative is available.

- 1) The second situation in which the law gives the union the right to represent employees is in investigative meetings with management. These meetings are sometimes referred to as WEINGARTEN meetings after a U.S. Supreme Court case in which the Court determined that in situations which an employee is being questioned by a management representative and reasonably fears that disciplinary action may be taken, the employee is entitled to union representation if the employee asks for such assistance.
- 2) The law does not require management to advise employees of the right to union representation prior to beginning the investigatory interview, although some Collective Bargaining Agreements have provisions requiring such notice. Employees are advised of this right at least annually.

3) Management options if the employee requests union representation during investigative interview.

- Stop the meeting and call in a union representative
 - Temporarily stop the questioning long enough to obtain a union representative.
 - Assure the employee there will be no discipline.
- 4) As with formal meetings, the union is entitled to take an active role in the meeting. The union representative may ask questions reasonably related to the matter being discussed and may raise relevant questions that would help the employee tell their side of the story. However, the union representative does not have the right to answer questions for the employee, to break up the meeting, or to try to prevent management from carrying out the investigation.

c. What Meetings Are Not Covered

Not all direct communications between management and employees are formal discussions or investigatory meetings. Discussions concerning an employee's performance, even though such discussions could lead to a poor performance rating or to a performance-based action, do not require a union representative to be present. Meetings to issue work assignments, to discuss work projects or position classification audits are not formal discussions.

8. USE OF OFFICIAL TIME BY UNION REPRESENTATIVES

a. What is covered

Employees appointed by the union to represent the union in dealings with management may be allowed official time, to the extent specified in the collective bargaining agreement, to engage in authorized representational activities. These activities include efforts on behalf of unit employees, such as investigating or presenting grievances, meeting with managers, and serving on safety committees. In addition, union representatives may request time to handle employee grievances, or discuss a problem with working conditions for unit employees. Refer to the negotiated agreement for specifics. During their normal working hours, Union representatives who are employees in the bargaining unit are also in an official duty status during contract negotiations.

b. What is Not Covered

A representative is not entitled to use official time to carry out internal union business. This may include such things as soliciting new members, working on a union newsletter, election of union representatives, or collection of dues. Internal union business must be conducted on the representative's own time, such as before or after work, while on annual leave, or during a lunch or scheduled work break.

9. UNFAIR LABOR PRACTICES

- a. The Federal Service Labor-Management Relations Statute allows employees, unions, and agencies to file complaints of alleged violations of the law and to get relief if a violation has occurred. These violations of law are known as unfair labor practice (ULP) charges. Generally, most ULP charges are filed by unions against management. If the union believes that management has violated a right provided by the law, the union may file an ULP charge with the Federal Labor Relations Authority (FLRA). The ULP charge is filed against the head of the activity, not against an individual manager who

may be directly involved in the issue. After allowing a 15-day delay to give the parties an opportunity to settle the problem informally, the FLRA will appoint an agent to investigate the alleged violation. The agent may take notes, collect documents, and ask for affidavits from witnesses in completing the investigation of the matter. Supervisors and managers should be accompanied by a Servicing HRO staff member at such meetings with an FLRA agent as the statements made may be used by the agent in prosecuting the ULP. During or shortly after the investigation, the agent may suggest one or more informal settlement possibilities as a way of resolving the issue. In cases where there is no basis for finding a violation of the law, the agent may suggest that the union withdraw its charge. If the union does not withdraw, the agent will consider the information developed through the investigation and decide whether the ULP charge has merit or whether the charge should be dismissed outright.

b. **Complaint and Hearing**

If the FLRA Regional Director concludes that the ULP charge has merit, a formal complaint will be issued. At this point, the agency must either settle the matter or defend itself in a formal hearing before an Administrative Law Judge. An attorney presents the union's case from the General Counsel's office of the FLRA. The union is not required to provide its own legal representation. The activity, on the other hand, must provide its own defense-usually a labor relations practitioner or attorney. Supervisors and employees may be called to testify at the hearing. Employees' and supervisors' time spent for preparation and attendance at the hearing is paid time without charge to leave.

c. **Decision**

1) Following the unfair labor practice hearing, the Administrative Law Judge issues a recommended decision that may or may not find that an ULP has occurred. If neither side files an appeal, the recommended decision becomes final.

2) **Remedial action options ordered if the FLRA decides that an ULP has been committed.**

a) **Cease and Desist Order and Posting**

When a violation of law is found the Federal Labor Relations Authority will order that the activity post a notice ordering it to "cease and desist" the practice that resulted in the violation of law. Such notices must be signed by the activity head and must be posted for 60 days in places where notices to employees are normally posted. The remedy is the minimum that can be ordered, and is always directed when a violation is found. Depending on the violation, other actions may also be ordered.

b) **Status Quo Ante Order**

When the FLRA finds that an activity made a change without bargaining with the union, the activity may be ordered to return to the status quo; that is, to the way things were before the improper change. This can involve replacing regulations or personnel policies, re-running personnel actions, reassigning or moving employees, or whatever else is necessary to put things back to the way they were before the improper change.

c) **Make Whole Order**

When an activity's improper actions may have caused employees to lose pay, benefits, or differentials, the FLRA can issue a made whole order. Depending upon the activity's actions, this might include restoration of an employee to a position, a retroactive promotion, back pay for improperly denied overtime or other differentials, and in some cases, even attorney fees for the work performed by union attorneys in helping to present the ULP case.

d) **Bargaining Order**

In situations in which an activity improperly refused to bargain with the union, the FLRA could also order the activity to negotiate in good faith on the matters or proposals involved.

d. Common ULPs Committed by Management

- The overwhelming majority of ULP charges against management allege a failure to bargain with a union concerning conditions of employment for bargaining unit employees. This occurs when management implements changes in conditions of employment without notifying the union and affording it an opportunity to bargain on the issue.
- The failure or refusal of management officials to allow union representatives to attend or participate in investigatory or formal discussion meetings.
- Refusal to provide information necessary for the union to investigate or process a grievance or to bargain on behalf of unit employees.
- Assertions that an activity management has discriminated against employees in taking various personnel actions based on their union involvement.

10. CONFLICTS WITH THE NEGOTIATED AGREEMENT

If a conflict exists between this directive and the provisions of the activity's negotiated agreement, the agreement will generally be controlling.

11. UNION'S RIGHT TO INFORMATION

Upon request and to the extent not prohibited by law, the following types of data will be made available:

- Normally maintained in the regular course of business
- Reasonably available and necessary
- Does not constitute guidance, advice, counsel or training

12. GRIEVANCES

- Review negotiated procedures
- Most built on 3 or 4 steps
- Work with HRO at the lowest level
- Process within negotiated time limits
- Employee can file grievance without union representation, however, union has statutory entitlement to attend meetings
- Don't take issue personally
- Don't make any commitments during grievance meeting
- Listen and take notes



**APPENDIX 18A
HRO SERVICED ACTIVITIES/LABOR ORGANIZATIONS**



HRO SERVICED ACTIVITIES/LABOR ORGANIZATIONS		
ACTIVITY	LABOR ORGANIZATION	BARGAINING UNIT
Commander Navy Region Northwest	International Association of Machinists and Aerospace Workers District Lodge 160, Local 282	All GS and FWS employees except professional employees, management officials, supervisors and others excluded by 5 USC Section 7112.
	American Federation of Government Employees, Local 1513	All professional employees except management officials, supervisors, and others excluded by 5 USC Section 7112.
	International Association of Firefighters, Local F-282	All employees of Puget Sound Federal Fire and Emergency services, Navy Region Northwest including fire protection specialists, fire communications, operators, emergency vehicle dispatchers, supervisor fire protection inspectors GS-9, and supervisory firefighters GS-8 and below. Professional employees, managerial officials, supervisors and others described in 5 USC Section 7112 are excluded.
	International Organization of Masters, Mates and Pilots	All Masters, Mates, and Pilots
Fleet Industrial Supply Center (FISC) and Defense Information Processing Center, Puget Sound	Bremerton Metal Trades Council	All GS and FWS employees including temporary and probationary employees, except for supervisors, management officials, professional employees, confidential employees, security specialists, employees engaged in Federal Personnel work in other than a clerical capacity, and others excluded by 5 USC Section 7112.
Intermediate Maintenance Facility Pacific Northwest	International Association of Machinists and Aerospace Workers District Lodge 160, Local 282	
Manchester Fuel Depot, FISC Puget Sound	American Federation of Government Employees, Local 48	
Naval Air Station Whidbey Island		

HUMAN RESOURCES MANUAL

HRO SERVICED ACTIVITIES/LABOR ORGANIZATIONS		
ACTIVITY	LABOR ORGANIZATION	BARGAINING UNIT
Naval Hospital Bremerton	American Federation of Government Employees, Local 48	All professional and nonprofessional employees, temporary and probationary employees, except for supervisors, management officials excluded by 5 USC Section 7112
Naval Hospital Oak Harbor	American Federation of Government Employees, Local 48	
Naval Magazine Indian Island	Bremerton Metal Trades Council	All GS and FWS employees including temporary and probationary employees, except for supervisors, management officials, professional employees, confidential employees, security specialists, employees engaged in Federal Personnel work in other than a clerical capacity, and others excluded by 5 USC Section 7112.
Naval Station Bremerton	Bremerton Metal Trades Council	
Naval Station Everett	American Federation of Government Employees, Local 48	
Naval Submarine Base, Bangor	International Association of Machinists and Aerospace Workers District Lodge 160, Local 282	
Resident Officers in Charge of Construction	National Federation of Federal Employees, Local 2096	
Strategic Weapons Facility Pacific	International Association of Machinists and Aerospace Workers District Lodge 160, Local 282	All GS employees, except supervisors, management officials, professional employees, confidential employees, security specialists, and others excluded by 5 USC Section 7112
	American Federation of Government Employees, Local 48	All FWS employees, except supervisors, management officials, and professional employees.

HUMAN RESOURCES MANUAL

HRO SERVICED ACTIVITIES/LABOR ORGANIZATIONS		
ACTIVITY	LABOR ORGANIZATION	BARGAINING UNIT
SUPSHIP Puget Sound	International Federation of Professional and Technical Employees, Local 6 (IFPTE)	All GS and FWS employees including temporary and probationary employees, except for supervisors, management officials, professional employees, confidential employees, security specialists, employees engaged in Federal Personnel work in other than a clerical capacity, and others excluded by 5 USC Section 7112.
Trident Training Facility, Bangor	International Association of Machinists and Aerospace Workers District Lodge 160, Local 282	