

FORT SAM HOUSTON

PAMPHLET 690-4

CIVILIAN PERSONNEL

**SUPERVISOR'S
LABOR-MANAGEMENT
GUIDE**

DEPARTMENT OF THE ARMY
U.S. ARMY MEDICAL DEPARTMENT CENTER AND SCHOOL
AND FORT SAM HOUSTON
Fort Sam Houston, Texas 78234-5014

FSH Pamphlet
No. 690-4

31 December 1996

Civilian Personnel
SUPERVISOR'S LABOR-MANAGEMENT RELATIONS GUIDE

When the masculine gender is used in this publication it is intended to include both the feminine and masculine genders.

TABLE OF CONTENTS

<u>CHAPTER</u>	<u>SUBJECT</u>	<u>PAGE</u>
1	Labor-Management Relations in the Federal Government	
2	Questions and Answers on the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5, U.S. Code	
3	Executive Order 12871 - Labor-Management Partnerships	3-1
4	Managements' Rights	
5	Union/Employee Rights	
6	Formal Discussions	
7	Weingarten Rights	
8	The First Line Supervisor	
9	Supervisor's Responsibilities and Activities Under the Statute	
10	The Negotiated Agreement	10-1
11	What the First Line Supervisor Should Know About Contract Negotiations	11-1

*This pamphlet supersedes FSH Pam 690-4, 8 Aug 84

FSH Pam 690-4

12	The Supervisor and the Steward	12-1
13	Handling Grievances Under Negotiated Procedures	
14	Arbitration	14-1
15	Official Time for Representation Functions	15-1
16	Management Unfair Labor Practices	16-1
17	Union Unfair Labor Practices	
18	Management's Obligations to Unions	
19	Effective Communications	19-1
20	Summary of Supervisory Responsibilities	20-1
21	Where to Get Assistance	21-1
APPENDIX A	Federal Service Labor-Management Relations Statute (Chapter 71 of Title 5, U.S. Code)	
B	Executive Order 12871 - Labor-Management Partnerships	
C	Frequently Used Terms in Labor-Management Relations	

FOREWORD

The Directorate of Civilian Personnel, U.S. Army Garrison, provides civilian personnel services to 32 appointing authorities representing 12 major commands and agencies on the installation of Fort Sam Houston. Recognition has been granted to 4 union locals of 3 National/International labor organizations. Three thousand (3000) of the approximately 4100 employees serviced by this office are covered as members of a recognized bargaining unit, by a federal sector union. Presently, there are 8 separate collective bargaining agreements (labor agreements) negotiated between management and unions. The possibility for additional bargaining units being recognized by the Federal Labor Relations Authority, which would trigger new obligations to negotiate new collective bargaining agreements, also exists.

The preceding indicates the active labor-management relations atmosphere at Fort Sam Houston and should serve to demonstrate to supervisors that unions in the Federal sector are active and viable, and must be properly dealt with in day-to-day workforce management. Therefore, supervisors must ensure that they are knowledgeable of labor-management relations responsibilities in general, and the requirements of labor contracts pertinent to their employees in particular.

This pamphlet serves as a compendium of labor relations information.

While this pamphlet does not purport to have all of the answers to upcoming problems and questions, it should contribute to a better understanding when dealing with labor organizations (unions).

Reading and getting familiar with the contents of this pamphlet, along with other recommended publications listed in the appendixes, is recommended.

The information provided in this pamphlet is of a general nature and is primarily geared toward the first-line supervisor. However, the labor relations principles contained in this pamphlet are applicable to all levels of supervision. In every case, supervisors should refer to and conform to provisions of appropriate labor agreements.

Director of Civilian Personnel

CHAPTER 1
LABOR-MANAGEMENT RELATIONS IN THE FEDERAL GOVERNMENT

What is it?

What does it mean?

GENERAL

Ask 10 people to respond to those questions and the answers will certainly be many and varied. There is, however, one word that responds to both questions--BILATERALISM. More simply put, it means that the Federal manager (supervisors are part of management), have to adapt to a new way of conducting business in their respective agencies, and that employees have an increased input into the formulation of the personnel policies and practices, and working conditions which affect them. The latter is usually conducted through an elected union representative. The labor relations program, like most Government programs, has an objective to improve the efficiency of Government operations and services to the public. As an employer, the Government is concerned with people needs and performance needs. Managers are too often primarily concerned with performance needs, while the union representatives understandably are interested primarily with people needs. If the labor relations program, a bilateral program, is to result in better service to the public, who pays for and expects these services, managers and union representatives must understand this and strive to meet the objectives of the program, a combination of program needs and people needs.

THE FEDERAL SERVICE LABOR MANAGEMENT RELATIONS STATUTE

The Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5, U.S. Code, (Appendix A) governs labor-management relations in the Federal government. While the statute is a complex document providing policy guidance in most phases of the program, two major thoughts are contained in the statute and serve as a foundation for all aspects of the program. The first major thought is contained in Section 7101 of the Statute and has already been discussed. Employees should be given the opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment. In this manner the well-being of employees and the efficient administration of the Government are benefitted. Second, Section 7102 of the Statute provides that:

"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.

1-3. MAKING THE LABOR-MANAGEMENT PROGRAM A SUCCESS

Given this policy, there are two vital contrasting developments needed to make the labor-management program a success:

a. Management must accept the philosophy of unionism outlined in the Statute. To do otherwise is to stick one's head in the sand. This not only involves recognizing unions as required by the Statute, but also accepting the legitimate role of unions and the fact that employees must have a real voice in determining personnel policies and working conditions affecting them.

b. Management representatives must be management-oriented and identify with management. This does not mean taking an anti-union stance, but simply expressing the legitimate interest of management. To this end the well-being of employees and the efficient administration of government will be improved.

1-4. DISPUTE RESOLUTION

a. Another unique aspect of the labor relations program is that in the resolution of disputes between management and the union (there have been and will be many), the Statute provides that impartial parties will decide the disputes. These are the so-called third-parties. The Federal Labor Relations Authority (FLRA), which establishes Federal-wide labor relations policies and guidance and renders decisions on such matters as representation issues, unfair labor practices, and negotiability disputes; the Federal Mediation and Conciliation Service (FMCS), which serves to mediate negotiations disputes in an attempt to have the parties reach a bilateral agreement; the Federal Service Impasses Panel (FSIP) whose members handle negotiations deadlocks that occur at the bargaining table; and, finally, arbitrators who serve as neutral judges hired by the parties to resolve grievances. Probably the most important and certainly most visible to management will be arbitrators. Grievance procedures in negotiated agreements must provide for arbitration; that is, an arbitrator will make the final decision in unresolved grievance disputes.

b. The Statute provides for many other aspects of labor relations. Some will be addressed in this pamphlet, some will be addressed in supervisory/management training courses, and some will be addressed by the labor relations staff of the Directorate of Civilian Personnel. There is no expectation to be thoroughly

familiar with all the intricacies of the labor relations program; that would require full and constant attention. However, management should acquire enough knowledge about labor relations to know when to ask a question. That is the job of the labor relations staff--to give labor relations support to line management. However, the critical point is that management is the primary point of contact with the union and must be prepared to carry out this important responsibility.



CHAPTER 2
QUESTIONS AND ANSWERS ON THE FEDERAL SERVICE
LABOR-MANAGEMENT RELATIONS STATUTE,
Chapter 71 of Title 5, U.S. Code

2-1. QUESTIONS AND ANSWERS

a. The below listed Questions and Answers provide some insight to the Federal Service Labor-Management Relations Statute.

Question: What does the Federal labor-management relations program mean to employees?

Answer: It provides them with a system of dealing with management, through which they can participate in establishing the terms and conditions of their employment. The Statute gives each employee the right to join a labor organization, or to refrain from doing so. And it provides that employees are protected in this option from any form of penalty or reprisal.

Question: This means that any Federal employee can belong to a union?

Answer: Yes. As a matter of right, all Federal employees may become union members. But certain of them may not participate in the management of the union, and certain of them may not be represented in an exclusive bargaining unit. Employees covered by an exclusive bargaining unit varies--some include all nonsupervisory employees, whether permanent or temporary, full-time or part-time, general schedule or wage grade, others only include permanent, full-time employees.

Question: What are the restrictions on employees participating in the management of their union, or holding union office?

Answer: A supervisor or other management official may not participate in these capacities or act as a union representative (except under limited circumstances explained in Section 7135 of the Statute). And a nonsupervisory employee may not do these things if his activities would result in a conflict of interest, or otherwise be incompatible with law or his official duties.

Question: What is a "labor organization" or "union" under the Statute?

Answer: It is a lawful organization in which employees participate, for the purpose of dealing with agencies concerning grievances, personnel policies and practices, or any other matters affecting the working conditions of the employees.

Question: What are a union's responsibilities under the Statute?

Answer: A union has the general responsibility not to:

- (1) Participate in a strike against any government agency, or obligate its members to do so;
- (2) Advocate the overthrow of constitutional government in the U.S.;
- (3) Discriminate in its conditions of membership because of race, color, creed, sex, age, or national origin.

In addition to these general responsibilities, a union which holds exclusive recognition is obligated not to engage in certain activities known as unfair labor practices, and to abide by the standards of conduct for labor organizations spelled out in the Statute.

Question: What is "agency management" under the Statute?

Answer: The head of the agency and all management officials, including supervisors and other management representatives, who have the authority to act for the agency on any matters relating to the implementing of the labor relations program.

Question: What are management's responsibilities under the Statute?

Answer: Management is responsible for making sure that employees are aware of their rights, as provided by the Statute, and for maintaining a posture of neutrality--making sure that no interference or discrimination is practiced in the agency that would encourage or discourage employees in their choice of whether or not to join or support a union.

In addition to these general obligations, management--like the union--is prohibited from engaging in certain specific unfair labor practices.

Question: Does the Statute apply to employees in all the agencies of the Federal Government?

Answer: It applies to all agencies in the Executive Branch, with these exceptions:

- (1) The General Accounting Office (GAO).
- (2) The Federal Bureau of Investigation (FBI).
- (3) The Central Intelligence Agency (CIA).
- (4) The Foreign Service--Department of State, International Communication Agency, and Agency for International Development and its successor(s).
- (5) The National Security Agency
- (6) The Tennessee Valley Authority (TVA)
- (7) The Federal Labor Relations Authority (FLRA); or The Federal Service Impasse Panel (FSIP).

b. There are two other considerations. Even where a given agency is covered by the Statute, an individual office, bureau, or entity within it may be excluded from coverage when that office's main function is investigating or auditing the work of agency employees, and the FLRA determines that the office must be excluded to avoid compromising internal agency security. Also, while a given agency may come under the Statute, certain installations or activities of that agency, which are located outside the U.S., may be excluded from coverage when the President determines this is necessary in the national interest.

CHAPTER 3
EXECUTIVE ORDER 12871
LABOR-MANAGEMENT PARTNERSHIPS

GENERAL

As a result of Vice President Gore's National Performance Review, President Clinton has signed Executive Order 12871, Labor-Management Partnerships. The Order is intended to change the current nature of Federal Labor-Management relations and will significantly change management's obligation to negotiate with recognized unions. There are three primary components of the Order:

- a. Partnership Councils.
- b. Alternate Dispute Resolution Methods.
- c. Expanded Bargaining Obligations.

PARTNERSHIP COUNCILS

The Order established the National Partnership Council, which consists of high level Government officials and Presidents of major Federal unions. The council will advise the President on Government reforms, and will recommend changes to the government personnel system and the current labor-relations statute. The order, and implementing guidance from DOD and DA, also provides for the establishment of councils at appropriate levels. A council or a scheme of councils have been established involving commands serviced by this office and the unions representing employees of the commands. The council(s) serve to involve employees and their union representatives as partners with management to identify problems and craft solutions to better serve the agency's customers and mission.

ALTERNATE DISPUTE RESOLUTION METHODS

The Order requires agencies to provide for systematic training for supervisors, managers, and union officials on non-adversarial, consensual, or cooperative methods of dispute resolution.

3-4. EXPANDED BARGAINING OBLIGATIONS

a. The Order requires Federal management officials to negotiate on subjects set forth in current statute as managements' "permissive rights." The current statute delineates bargaining rights and obligations of unions and management

entities in three categories. Some matters are considered to be mandatory areas of bargaining; bargaining is prohibited on other matters reserved to management, and traditionally other matters could be negotiated at management's discretion (i.e., management's permissive rights).

b. The Order does not change the statute but it serves to take discretion away from local management. The permissive matters, or rights, are set forth at 5 USC 7106(b)(1). Henceforth, we are required to bargain in good faith " ... on numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty," and " ... on the technology, methods, and means of performing work." Because of this change, management will be required to formally notify the appropriate union and provide an opportunity to negotiate, as appropriate prior to initiating organizational changes (e.g., reorganizations) affecting bargaining unit employees. Accordingly, management should coordinate organizational changes with the DCP labor management staff to determine if a notice period is required. As always, the requirement to negotiate does not carry a corresponding requirement to agree to union proposals that do not contribute to mission accomplishment. However, our expanded bargaining obligations highlight the need to abandon traditional negotiation techniques in favor of nonadversarial, consensual, and cooperative methods.

c. The full impact of the Order may not be identified until we have some experience in dealing with our unions in accordance with the new relationships. For certain, both (management and union) must make a "paradigm shift" and view the unions as partners in all problem solving efforts. Cooperation and assistance in ushering-in this new era in labor-management relations is needed and will be greatly appreciated.

CHAPTER 4
MANAGEMENTS' RIGHTS

4-1. GENERAL

a. As the bilateral determination of personnel policies, practices, and matters affecting working conditions increases in the Federal Government, it becomes more and more important that management retain the ability to function efficiently and effectively in the public interest.

b. In a collective bargaining sense, this means management must not negotiate away its ability to decide what is to be done, when it is to be done, where it is to be done, how it is to be done, and by whom it is to be done. This does not mean that employee concerns are not considered or that there are not some areas for legitimate union input. Rather, it means management must seek to retain the right to take final action and that such action must not be unduly delayed or inhibited by the collective bargaining relationship.

c. The scope of bargaining as established by Title VII essentially provides that management shall negotiate with the union on conditions of employment (personnel policies and practices and matters affecting working conditions), so far as they may be appropriate under applicable laws and regulations.

d. In accordance with Title VII, management may not negotiate **away** the following rights:

(1) To determine the mission, budget, organization of employees, and internal security practices of the agency.

(2) 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.

(3) To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted.

(4) With respect to filling positions, to make selections for appointments from:

(5) Among properly ranked and certified candidates for promotion.

6 Any other appropriate source

(7) To take whatever actions may be necessary to carry the agency mission during emergencies.

MANAGEMENT RIGHTS

a. There are certain management rights that management may choose to negotiate, but may elect not to (known as the "permissive rights clause" of the Statute). These areas concern the following: the numbers, types, and grades of employees or positions assigned to any organization subdivision; work project or tour of duty; and the technology, methods, and means of performing work. With the advent of President Clinton's Executive Order 12871, Labor-Management Partnerships, management must now negotiate fully on these subjects.

b. Although these are the rights management must protect the following considerations apply in exercising these rights

(1) Procedures for implementing a management decision and the impact of the decision is negotiable.

(2) Management's rights to select methods and means to be used is limited when there is hazard to the health, safety, or general well-being of employees.

(3) Management's right to discipline employees has to be balanced against the right of employees to be protected against arbitrary, discriminatory, and inequitable treatment.

(4) Employees and the union must be provided the opportunity to grieve and seek redress of management's personnel decisions and actions, but only after management acts.

c. Given the determination of mission and its implementation, day-to-day decision making authority, disciplinary power, and control over the means and techniques by which the work is to be performed, management can do the job it has to do. And it can do that job better when it involves the union in matters of mutual concern. Where the matter is not appropriate for negotiation, this involvement can be achieved through informing and/or consulting with the union. In either case, management must be constantly aware of its responsibility to protect the public interest, the rights of employees, and the union's right to represent the employees under exclusive recognition.

d. Looking ahead, we can reasonably expect that agency management will find it increasingly difficult to rely on the mere existence of management rights provisions and the retained rights provisions of the law as a barricade to protect its essential obligation to promote and protect the public interest. This barricade must be fortified by a strong and well-stated rationale, and be manned by management officials who possess the understanding, ability, and capacity to retain control over those factors they need to run their organizations and accomplish their mission.

CHAPTER 5
UNION/EMPLOYEE RIGHTS

EMPLOYEE RIGHTS

In addition to providing certain management rights, Title VII also provides that employees and recognized unions are entitled to statutory rights. Some of the rights with which supervisors should be familiar are summarized as follows:

a. Employee Rights. Employees have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of reprisal. These rights include the option of serving as a union representative, presenting the views of the union, and bargaining with respect to conditions of employment through their chosen representatives.

b. Employees have the right to authorize the payment of union dues through payroll deduction. Any such allotment shall be made at no cost to the employee or the exclusive representative. This allotment may not be revoked for one year, unless the employee leaves the represented bargaining unit or is expelled from union membership, or if the union loses recognition. Supervisors are not normally eligible for payroll deduction of union dues because they are excluded from bargaining units and they are not covered by Title VII.

REPRESENTATION RIGHTS

The union-granted recognition is the exclusive representative of employees in the bargaining unit. The union is entitled to act for, and negotiate collective bargaining agreements covering all employees in the unit. The union must represent these employees whether or not they are dues paying members.

a. The union should be given the opportunity to be represented at any formal discussion between agency representatives and unit employees (or their representatives) concerning any grievance, personnel policy or practice, or other general condition of employment. Employees are also entitled to be represented by the union at any investigative meeting conducted by an agency official if the employee reasonably believes that the examination may result in disciplinary action and if the employee requests representation.

b. Union representation rights do not prevent an employee from being represented by an attorney or other representative (other than the union) when exercising grievance or appeal rights

established by law, rule, or regulation. However, when presenting grievances under the negotiated grievance procedure, employees may only be represented by the union or someone approved by the union.

5-4. CONTRACTUAL RIGHTS

a. Although the most important and basic employee and union rights are contained in Title VII, labor agreements will frequently contain procedures for exercising those rights. Contracts also contain additional contractual rights that have been negotiated between the agency and the union.

b. Failure by management officials and supervisors to honor all employee and union rights will result in unnecessary grievances and unfair labor practice charges. Therefore, it is important for supervisors to recognize, and not interfere with these rights.

CHAPTER 6
FORMAL DISCUSSIONS

UNION ATTENDANCE AT FORMAL DISCUSSIONS

a. As the "exclusive representative" of bargaining unit employees, unions have certain rights and entitlements under the Statute. One of these is to be given the opportunity by management to send a union representative to any "formal discussion."

b. Management has a positive obligation to invite the union to attend 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.

c. There are two key characteristics in determining whether a discussion is a "formal discussion" thus requiring the union to be invited, or some other type of discussion you may have with your employees:

- (1) Who will be at the meeting
- (2) The subject of the discussion

STATUTORY DEFINITION--WHO WILL BE AT THE MEETING

For a meeting to be considered a formal discussion, it must include:

- a. One or more representatives of the agency (e.g., supervisor(s), management official(s), personalized, attorney(s)).
- b. One or more employees in the bargaining unit or their representative(s).

6-3. STATUTORY DEFINITION--THE SUBJECT OF THE MEETING

a. A meeting does not become a formal discussion unless the subject concerns an individual's grievance or general condition of employment.

(1) Grievances: A discussion between management and a grievant relating to a negotiated grievance is a formal discussion. The union must be invited to attend even if the

employee is representing himself or herself in the negotiated grievance proceeding.

(2) Working Conditions: Discussions with bargaining unit members about general conditions of employment or personnel policies and practices. Normal shop talk is not a formal discussion.

b. The Federal Labor Relations Authority has indicated certain factors it will look at in determining whether a meeting was a formal discussion:

(1) Whether the individual who held the discussion is merely a first-level supervisor or is higher in the management hierarchy.

(2) Whether any other management representatives attended.

(3) Where the individual meetings took place (i.e., in the supervisor's office, at each employee's desk, or elsewhere)

How long the meetings lasted.

(5) How the meetings were called (i.e., with formal advance written notice or more spontaneously and informally).

(6) Whether a formal agenda was established for the meetings.

Whether each employee's attendance was mandatory.

(8) The manner in which the meetings were conducted (i.e., whether the employee's identity and comments were noted or transcribed.)

c. If the meeting meets the definition of a formal discussion, the supervisor must invite the union to attend. A shop steward, that works in the office, and is attending the meeting in the role of an employee, does not meet this obligation. Rather, the union must be invited to the meeting and given the opportunity to designate the individual of their choice to act as representative.

d. Finally, the union is allowed to **participate** in **these** meetings by raising questions/comments/concerns, but it cannot disrupt them.

6-4. EXAMPLES OF WHAT ARE OR ARE NOT "FORMAL DISCUSSIONS"

a. An employee (under your supervision) has requested a promotion, but is performing at a level which, at best, could be described as "average" for his current grade. When calling the employee in to inform him what deficiencies exist in his work and how to improve to justify a promotion, the employee insists on union representation during this discussion.

b. An employee (under your supervision) has asked for a meeting for the purpose of filing a grievance under the negotiated grievance procedure. The employee also indicated that he has chosen not to use the union as his representative.

c. As the manager of a large organization in an agency, awareness of the obligation to allow the union to be represented at all formal discussions is required. Prior to the discussion, the union needs to be informed on when and where the discussion will take place and an invitation to the discussion must be extended. At the appointed time, if the union fails to send a representative, and several managers from out of town were assembled, what obligation does management have to the union?

d. Answers:

(1) A "counseling session" of the type described above, is not considered to be a formal discussion within the meaning of 5 USC 7114. As it is a counseling session, the union does not have to be given an opportunity to be represented at the meeting. The major distinction between a formal discussion and other types of meetings is that a formal discussion has ramifications for collective bargaining unit employees other than just the one employee at the meeting. Therefore, you would not grant the employee's demand since the meeting is a personal counseling session. (NOTE: Always check your collective bargaining agreement on this matter since the union may have negotiated additional entitlements to union representation at the bargaining table.)

(2) Since a union has an obligation to represent the interests of all bargaining unit employees, it must be given an opportunity to be represented where a grievance may be adjusted. The union will not be representing the employee if the employee does not want union representation. However, the union must still represent the interests of all employees in the bargaining unit. The theory employed by the Statute is that the union cannot fulfill its legal obligations without being aware of any interpretations of the collective bargaining agreement being made by management. Affording the union an opportunity to be

represented ensures that the union will be able to transmit to other employees interpretations which have been made of the agreement and to challenge any interpretations of the agreement which the union may feel are incorrect. Therefore, management would be obligated to extend an invitation to the union to attend the grievance meeting.

(3) Management has an obligation to afford the union an opportunity to be represented. If the invitation was extended, the obligation has been fulfilled and the meeting should be held.

CHAPTER 7
WEINGARTEN RIGHTS

7-1. EXAMINATION OF EMPLOYEES ("WEINGARTEN" RIGHTS)

a. The union is entitled to representation in meetings with bargaining unit employees in connection with an investigation. This provision is often referred to as an employee's "Weingarten" right, based on a Supreme Court decision. The Federal Service Labor-Management Relations Statute establishes three conditions for a "Weingarten" meeting:

(1) One or more agency representatives are examining (questioning) a bargaining unit employee in connection with an investigation.

(2) The employee reasonably believes that the examination may result in disciplinary action against the employee.

(3) The employee requests union representation

b. Once these three conditions have been met, the examination, without allowing the employee the requested representation, may not continue. Specifically, the options under these circumstances are:

(1) Grant the request and notify the union that a meeting to examine a bargaining unit employee is going to take place and that the employee has requested union representation. If the union attends the meeting, it must be allowed to make relevant comments but cannot disrupt the meeting nor can it answer the questions posed to the employee.

(2) Discontinue the interview and rely on evidence already available or information obtained from other sources.

(3) Offer the employee a clear choice to continue the interview without representation, or have no interview.

c. "Weingarten" rights are not applicable when management issues a disciplinary action since management is not asking any questions. Additionally, the "Weingarten" right does not come into play when engaging in performance counseling as this does not concern disciplinary matters but, rather, performance issues

d. Finally, management, usually the installation labor relations specialist, is responsible for annually notifying employees of their "Weingarten" right. This can be accomplished by desk drops, notices in the installation paper, etc. The

FSH Pam 690-4

"Weingarten" rights are not like "Miranda" rights, in that management is not obligated to inform employees of their rights each time before questioning them. (However, it is important to check your labor-management collective bargaining agreement, since it may contain a requirement for individual notification prior to questioning employees where discipline may result.)

CHAPTER 8
THE FIRST-LINE SUPERVISOR

8-1. GENERAL

The first-line supervisor is the "key individual" in the organization's labor relations with the union or unions with which it has collective bargaining agreements. The importance attached to the role as the first-line supervisor in labor relations is strongly supported by the opinions of leading authorities--arbitrators, government officials, union officials and academic authorities.

8-2. FIRST-LINE SUPERVISORS

a. First-line supervisors have been referred to as the "harassed" in public management, and are required to be an expert in the functions of their department or section; keep voluminous records, attend numerous meetings, anticipate production bottlenecks, meet work schedules, and be responsible for work performance. In addition, supervisors are expected to anticipate and substantiate temporary and regular manpower needs and efficiently assign, train, promote, utilize and direct employees. In all of these activities of a first-line supervisors undertakings--actions, which involve the efficiency of agency operations and government funds, supervisors are required to constantly keep the organization's contractual agreements with the union in mind.

b. Under pressure of getting the job done, with time at a premium and the union steward always watchful, supervisor's might be inclined to overlook rule violations, make verbal side agreements or approve some expeditious, but incorrect contract interpretation. This might save some time, but it also might result in harmful and costly precedents which could prove difficult, if not impossible, to eliminate.

c. This pamphlet is intended to assist in the role of management's "key individual" in the administration of the labor agreement.

d. Union education departments distribute labor relations guides to stewards, to acquaint them with their responsibilities, and to broaden their labor relations experience. It is imperative that the first-line supervisors have the same familiarity with the various phases of labor relations. The responsibilities in labor relations represent an integral part of the success of the daily and continuing operations of the installation or agency, and of effective labor relations in the Federal Service.

CHAPTER 9
SUPERVISORS' RESPONSIBILITIES AND ACTIVITIES UNDER THE
STATUTE

9-1. DISCUSSION OUTLINE

Questions and Answers

Question: Who is a supervisor under the Statute?

Answer: An employee with the authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action. The exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Question: Can supervisors be members of a union?

Answer: Yes. Each employee of the Executive Branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization, or to refrain from any such activity, and each employee shall be protected in the exercise of this right.

Question: What limitations does the Statute place on supervisors' involvement in internal union affairs?

Answer: Supervisors may not participate in the management of a union or act as a representative of a union (elected officer, business agent, steward, etc.).

Question: Are these the only restrictions on supervisors under the Statute?

Answer: No. Any employee including a supervisor, is prohibited from participating in union affairs or activities when such would result in a conflict or apparent conflict of interest, or otherwise be incompatible with law or with the official duties of the employee.

Question: Do supervisors vote with other employees to determine union recognition?

Answer: No. Supervisors are excluded from units of recognition by the Statute and therefore, do not vote on the question of union recognition.

Question: Does an exclusive union represent supervisors as well as employees?

Answer: No. Supervisors are part of management and are not included in the unit of recognition and are not covered by the negotiated agreement.

Question: In addition to supervisors, are there other employees who would be excluded from an exclusive unit?

Answer: Yes. Employees engaged in Federal personnel work in other than a purely clerical capacity and other management officials having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under the Statute.

Question: If the union does not represent supervisors, how do supervisors participate in the decision-making process and in the program development of the agency?

Answer: The FPM requires each agency to establish a system for intramanagement communication and consultation with its supervisors. The purposes of these systems are to improve agency operations, improve working conditions for supervisors, improve managerial effectiveness, facilitate exchange of information, and contribute to the establishment of policies that best serve the public interest in accomplishing the mission of the agency.

Question: If employees are uncertain about union membership, union benefits, or union representation and ask for the supervisors' opinions, what should supervisors say?

Answer: Supervisors should state that the Statute prohibits them from interfering, restraining, coercing, or discriminating against employees with respect to union membership or activities, as well as encouraging or discouraging union membership. For this reason supervisors should tell employees that the decision is solely theirs to make.

Question: Does a supervisor's "neutrality" extend to nonduty--informal after hours socializing?

Answer: Yes. The general rule is that both management and the union view supervisors as part of management, and both expect supervisors to adhere at all times to the restrictions on influencing employees regarding union membership or union activities.

Question: In view of the "neutral" role of management/supervisors with employees regarding union membership and activities, can supervisors in any way control employee activities for or against unions?

Answer: The Statute prohibits solicitation of union dues and other internal union business during the duty hours of the employees involved. Employees have the right, during nonworking time, and on agency premises, to solicit other employees for or against a union or unionization, and can distribute literature on nonworking time in nonworking areas. Supervisors may not become involved in assisting or sponsoring these activities.

Question: Can supervisors control the distribution of union literature during membership drives?

Answer: Management and the union usually agree prior to the campaign how literature, if any, will be posted or distributed. Supervisors are responsible to help management enforce such agreements. Such agreements generally control the distribution of union literature in workareas and during the duty hours of the employees involved.

Question: In view of the fact that a majority of employees voting in a representation election can decide the issue, what can or should a supervisor do to combat employee apathy and ensure a good turnout at the election.

Answer: Managers and supervisors should encourage employees to exercise their franchise. This is to be done through the prominent displaying of notices of election, posters urging employees to vote, and notices in house, such as in blood donor programs, charity drives, and related activities. Agency generated issuances may emphasize that a majority of the valid votes counted will determine the representation issue. The Statute protects the rights of employees not to vote, as well as to vote. Supervisors should refrain from "arm twisting."

CHAPTER 10
THE NEGOTIATED AGREEMENT

10-1. GENERAL

What is a negotiated agreement? What does it mean? The definition of a negotiated agreement can simply be stated as a written agreement between management and the union setting forth specific personnel policies, practices, and working conditions for the bargaining unit employees. While the definition may be simple, the proper preparation for and negotiation of agreements involves long, hard, and tedious work. Once an agreement is reached, the ball, in a manner of speaking, is passed to the supervisor. The agreement will live or die, be a piece of paper or a living document based on the implementation and administration of the agreement. Supervisors are the key persons in the labor-management relationship.

10-2. NEGOTIATED AGREEMENT

a. The negotiated agreement is a set of guiding principles, a set of rules, that will affect the supervision of your employees. This is not meant to imply that putting the agreement into effect becomes the responsibility solely of the supervisor. Contract administration, as it is called, is a total management responsibility, but the fact remains that supervisors bear the greatest and most crucial burden in applying and implementing the contract provisions. The difficulty comes in attempting to give the words and phrases in the agreement the meaning and intent that management and the union agreed to in negotiations. If this is not done, the role of the steward is brought into play, because it is the union's job to "police" the agreement; i.e., make sure management adheres to the provisions of the agreement. Similarly, management is expected to "police" the agreement to see that employees and the union's representatives comply with their undertakings in the agreement--it is a two-way street. This is not a phase of labor-management relations to be taken lightly. Poor contract administration leads to grievances, unfair labor practices, and, often, to a poor labor-management relations climate--or worse, impaired employee morale and reduced efficiency. Also, items that were of major consequence to the activity in negotiations, can be watered-down or lost entirely in the faulty administration of a labor agreement.

b. The first phase in administering the negotiated agreement is for supervisors and other levels of management within the activity to know what has been agreed to between the parties, and possibly as important, what has not been agreed to. Unfortunately, the reading of the agreement will not be

sufficient. It then becomes crucial that all levels of management have a common understanding of the agreement. Different members of supervision and management cannot administer the words and phrases of the agreement as each separately understands and interprets them. To prevent this type of situation from arising, management should schedule a series of meetings with all levels of management to brief them on the newly negotiated agreement. It is important that at least one member of management's negotiating team be at each of these briefing sessions. This way, management will be able to clarify, in its own mind, the intent of the language contained in the agreement. In addition to going over the agreement section-by-section, the reasons for including or excluding certain agreement language can be explained. Once briefed on the agreement, particular attention should be given to the sections that are anticipated or will come to bear in their respective department.

c. Some agreements may seem like a maze of legal language, but remember, every provision in the agreement took many hours of negotiation between the union and management, in the intent to respond to their respective needs and problems in governing their day-to-day relationships. So notice and analyze what each article covers, whether it be hours of work, holiday and/or overtime assignments, work measurement procedures, official time for union representational duties, etc. It's not necessary to memorize the contract, but it is important to know where to look for provisions that apply to situations that may have to be confronted within your organization. Annotating the agreement may help to get a better understanding. Stewards frequently will have a worn-out copy of the agreement--showing frequent reading; management's copy should be equally worn--for the same reason.

d. After studying the agreement thoroughly, discussions with other supervisors about the agreements are encouraged. An agreement is a lot like an iceberg--there is a lot more below the surface than there is above. Other supervisors may be able to help describe the unseen portion as a result of prior experiences. Few, if any, agreements state exactly what is to be done about every situation. Often the just settlement of problems depends on the way a supervisor interprets a provision--and then whether the supervisor and the union representative can arrive at some agreement regarding this interpretation. Supervisors will have a better understanding of the agreement by learning what is going on in other departments of the organization. (An important thing to keep in mind is that the problems affecting one supervisor may be affecting a number of other supervisors; therefore, no one supervisor should be operating in a vacuum.)

e. Another important concept to agreement administration is "past practice" which is defined as: "management practices not covered in the agreement that have been established over a period of time, which have gone unchallenged by the union, or are followed regardless of what is stated in the agreement." The latter usually evolves where the agreement language is ambiguous or the supervision is weak. Why is past practice important? All agreements provide for binding arbitration as the terminal step of the grievance procedure. If and when an arbitrator renders an award, he or she will not only look to the agreement, but also to any past practices being observed by both parties. Conceivably, by not applying the agreement language as written, we can alter the intent of what was actually negotiated. While past practice may not necessarily be bad, we should be aware of what we are doing, and be alert to the possibilities of eroding the effect of agreement language, management worked long and hard to obtain.

f. Management should always remember that a labor agreement cannot cover all things nor anticipate all situations that may arise. However, questions will arise as to what the terminology in the agreement means; problems will appear that escaped the consideration of the negotiators; and new situations will develop, situations not contemplated at the time of negotiations. Finally, there will be those situations to be treated which are a tradition in the organization, but are not really or realistically covered in written form.

g. Based on the foregoing, it follows then that the agreement does not in reality set the parameters of the labor-management relationship following the completing of negotiations. Supervisors will often be asked to deal with subjects not specifically covered in the agreement. Supervisors must be prepared to deal on a wide variety of subjects affecting the employee and the conditions of employment not covered in the agreement. It is in these situations that the personnel office can offer a great deal of assistance.

h. One last but important item to remember about negotiating an agreement is that preparation for the next negotiations begin immediately upon completion of the current agreement. Here, too, valuable assistance to management's negotiating team can be provided. Keeping notes on all aspects of the agreement serves as a tool and valuable source of information for the next management negotiating team, when the cycle begins all over again. Listed below are some important questions for consideration:

- (1 What's wrong with the agreement?

What's right with the agreement?

What needs to be modified?

What needs to be added?

What needs to be deleted?

What needs to be clarified?

(7) What has caused problems for you?

i. Questions about the agreement, its meaning or its application, should be discussed with your superiors, or the Labor Relations Office. No question is "dumb"--not asking may be "dumb." There is no disgrace in not knowing the "answer"--there is in not admitting the lack of knowledge.

CHAPTER 11
WHAT THE FIRST-LINE SUPERVISOR SHOULD KNOW ABOUT
CONTRACT NEGOTIATIONS

11-1. GENERAL

a. Few first-line supervisors are involved in contract negotiations as members of management negotiating teams. However, there are at least two major reasons why it is important to be acquainted with the process of contract negotiations.

b. It will help to carry out the key role and function in providing informational support before and during actual contract negotiations.

c. Understanding the dynamics and outcome of contract negotiations, will help to administer the contract--to interpret and apply it as intended by management.

11-2. PROVIDING SUPPORT IN CONTRACT NEGOTIATIONS

a. The formal phase of contract negotiations begins when:

(1) The newly certified collective bargaining agent (union) requests its first meeting with management to discuss a written contract, or submits its contract proposals.

(2) When, within the stipulated number of days prior to the expiration of an existing contract, either party notifies the other concerning the renewal, extension, or renegotiation of the contract.

b. However, supervisors must understand that the planning and preparation phase of contract negotiation begins when the union first appears on the scene, in the case of a first contract, or as soon as a current contract is signed by both parties. Thereafter, there is no real "conclusion" to planning and preparations for contract negotiations.

11-3. UNDERSTANDING THE DYNAMICS AND OUTCOMES OF CONTRACT NEGOTIATIONS

a. The final agreement is the outcome of the dynamics of contract negotiations. Chances are that the understanding about the intent and application of each contract clause will be different for both management and the union. This is the reason that the law requires that each contract has a negotiated grievance procedure to interpret its clauses.

b. The union will seek to test the boundaries of management intentions in contract administration, often attempting to get from the supervisor what it could not get at the bargaining table. This is standard operating procedure. It is a practical reality of collective bargaining. The supervisor must know the management position on the interpretation of each clause. Management should therefore have a considerable interest in being involved in and kept informed about the progress of contract negotiations.

c. Supervisors are members of the management team closest to each employee. They hear rumors concerning union proposals and demands, its bargaining plans and strategies and, occasionally, what the "real" issues are. Without prying into union affairs, supervisors have access to this information. They are in a position to best judge the temper of the employees and the reliability of the information.

d. Knowing their employees helps supervisors make this judgment. They can separate fact from fiction, hard information from the exaggerations. Open channels of upward communication should enable them to keep their middle and top management team members continuously informed about these matters.

e. Unresolved problems and complaints frequently turn up as union contract demands. The supervisor's ability to resolve problems and complaints helps eliminate unimportant demands. Identifying and reporting those problems which could not be resolved, helps the negotiating team anticipate union proposals and positions.

f. As contract negotiations continue, supervisors are in a position to provide operational and statistical information, such as number of employees, by classification and pay rates; number of employees receiving shift differentials; length of service information; overtime worked, etc. Supervisors may be asked about their experiences and problems in administering the existing agreement. Finally, they should be involved in assessing the implications and effects of union proposals on contract clauses.

CHAPTER 12
THE SUPERVISOR AND THE STEWARD

12-1. GENERAL

a. The signing of an agreement is no guarantee that sweetness and light will prevail during its lifetime between labor and management. It signifies only that the management and the union have reached some accord over the terms and conditions of employment--the best accord possible under the circumstances.

b. If this accord was reached in a friendly atmosphere, it will make the job of administering the agreement--contract administration--an easier one than if hostility prevailed during the negotiations. Regardless of the atmosphere of the negotiations, anticipate that differences over the intent, meaning, and application of specific contract clauses will arise almost immediately after the signing of the agreement. Frequently, these occur even during the period when management is informing supervisors about the interpretation and application of its terms. Expect that differences and disputes will continue in greater or lesser degree during the entire life of the agreement.

12-2. SUPERVISOR'S IMPACT ON CONTRACT ADMINISTRATION

a. Effective contract administration depends on the first-line supervisor. The impact of the first-line supervisor's behavior, the actions and decisions will certainly be felt throughout the section or department. It may be of such consequence that the impact will spill over to the entire installation, and perhaps to the agency as a whole or to other agencies.

b. Extensive preparation for negotiation, careful drafting of contract language, and wide and thorough dissemination of explanations of the interpretation and application of the new agreement, are only as successful as the first-line supervisor in his daily administration of the agreement. Or, first-line supervisor's can establish such positive relations with the employees and union stewards that they dramatically promote harmonious labor-management relations on the installation and agency. Attitudes about the agreement, the union, the union steward, and the supervisor's behavior in contract administration will greatly influence the quality of the administration of the agreement. First-line supervisors represent management's labor relations policies to employees, and to the union stewards, first-line supervisors are management's representative. First-line supervisor's occupy an important position--the key position--in the administration of the agreement.

12-3. FIRST-LINE SUPERVISORS--IT'S YOUR JOB TO MAKE THE DECISIONS

a. Promoting positive labor relations and increasing the nature and scope of consultation with the union steward does not mean surrendering responsibility for taking actions or making decisions. Good labor relations can produce an atmosphere of cooperation, of mutual trust and understanding. Management through first-line supervisors must take positive actions and decisions.

b. For example, if an employee files a grievance under the negotiated procedure and does not elect to be represented by the union, the supervisor should ensure that the union is allowed its rights under the Statute and the labor agreement. In such cases, the union must be given the opportunity to be present when the grievance is discussed, and the adjustment of the grievance must not conflict with the terms of the negotiated agreement.

c. Keeping the union informed is essential in obtaining cooperation. Affirmatively, communicating to the union president or the designated steward such matters as changes in schedules, proposed discharges or layoffs, contemplated overtime, etc.--after management has made the decision and prior to the announcement to the workers--is part of management meeting its obligations under the Statute, and will reduce friction between the management and union representatives.

d. As a practical matter, enlisting the steward's cooperation by keeping him aware of what actions are to be taken is demonstration of courtesy, which must not be ignored and which will be most beneficial to the organization and agency.

12-4. "COOPERATION" DOES NOT MEAN COMANAGEMENT

a. By the very nature of their respective positions, the supervisor and the steward are bound to be on opposite sides of many issues and cannot "comanage." Nevertheless, there are areas in which close cooperation is called for. For example, departmental safety should be of genuine mutual interest, as should the control of absenteeism. These matters are of equal importance to the organization, the workers, and the union.

b. There are no hard-and-fast rules to be followed which will ensure peace between the supervisor, the steward, and the workers. The development of a decent relationship is a matter which must be approached differently in every workarea. However, it can confidently be stated that following the basic principles of fair, reasonable, and honest dealings will, almost

always, be the best method of securing the cooperation of the steward and the workers. If this approach does not produce results, the supervisor is in a position to request that management exert its influence to have the International/National union take internal corrective action within the local union.

12-5. UNDERSTANDING THE STEWARD'S ROLE

a. Management should recognize the steward as one elected to a position of trust by his fellow members, and accord the steward the cooperation and respect necessary to do an effective job. Too often supervisors are not informed about the rights and responsibilities of the steward, and a type of personal guerrilla warfare ensues.

b. Supervisors must recognize and understand that stewards are often forced, for political reasons, to take positions with which they not necessarily agree. This is true, of course, about certain management decisions which the supervisor must follow. In either case, both have the right to expect sympathetic understanding from the other. Labor relations is not a one-way street and, if it assumes that form, resentments and antagonisms will eventually spell disaster for the relationship, the workers, and the installation and agency.

c. Supervisors and stewards have the right to mutual respect. The supervisor must recognize that the steward has contractual rights to handle grievances, and should not be denied reasonable time and access to employees to perform this job. Unions allege that given cooperation, stewards will take care of more borderline grievances than they file. The steward should be allowed to demonstrate his good faith intention in this respect.

d. Similarly, the supervisor must not be hampered in his primary function of securing efficient production by any actions of the steward. The supervisor has the right to expect the steward to support him in getting a fair day's work for the wages paid.

CHAPTER 13
HANDLING GRIEVANCES UNDER NEGOTIATED PROCEDURES

13-1. GENERAL

a. Since the scope of the negotiated grievance procedure is negotiable, the coverage of the procedure may vary from contract to contract. In most cases, the negotiated procedure may be the exclusive procedure available to covered employees for filing complaints. This would preclude these employees from utilizing the agency grievance procedure and in some cases, statutory appeal procedures. In all cases, supervisors should refer to the grievance procedure article in their labor agreement to determine which procedures are applicable.

b. Even though the supervisor usually does not actually negotiate the contract, he is an integral part of management's team and is of crucial importance to the labor relations process in contract administration.

c. A recent development concerning negotiated grievances is the advent of Alternative Dispute Resolution (ADR) procedures. Under an ADR program, alternate means are introduced to resolve employee complaints before a grievance reaches the final stage. Some ADR processes include mediation, peer-panel reviews, facilitation, etc. The goal of ADR is to provide an informal, local method for amicably resolving disputes at the lowest possible level without the need for invoking third party arbitration.

13-2. REDUCING THE NUMBER OF GRIEVANCES

While there is no magic formula for eliminating grievances, the following suggestions should help the supervisor reduce the number of grievances.

a. Be alert to the usual causes of grievances. Do not knowingly violate the contract. For example, distributing overtime unequally in violation of a contract provision to the contrary is an open invitation to a grievance.

b. Keep the workers informed regarding the quality of their work performance.

c. Correct minor irritations promptly.

d. Encourage constructive suggestions.

e. Keep promises

APPENDIX A

The Federal Service Labor-Management Relations Statute

(Chapter 71 of Title 5 of the U.S. Code
and Related Amendments to
5 USC 5596(b)—The Back Pay Act)



PUBLIC LAW 95-454—OCT. 13, 1978

92 STAT. 1191

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

“Subpart F—Labor-Management and Employee Relations

“CHAPTER 71—LABOR-MANAGEMENT RELATIONS

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

- “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.

“SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

“Sec.

- “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.

“SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

“Sec.

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

“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

“Sec.

“7131. Official time.

“7132. Subpenas.

“7133. Compilation and publication of data.

“7134. Regulations.

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

“SUBCHAPTER I—GENERAL PROVISIONS

5 USC 7101

“§ 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.

5 USC 7102.

“§ 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.

5 USC 7103.

“§ 7103. Definitions; application

“(a) For the purpose of this chapter—

“(1) ‘person’ means an individual, labor organization, or agency;

PUBLIC LAW 95-454—OCT. 13, 1978

92 STAT. 1193

“(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 Agency for International Development, or the International Communication Agency; or

“(v) any person who participates in a strike in violation of section 7311 of this title:

5 USC 731

“(3) ‘agency’ means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans’ Canteen Service, Veterans’ Administration), the Library of Congress, and the Government Printing Office, but does not include—

5 USC 2105.

“(A) the General Accounting Office;

“(B) the Federal Bureau of Investigation;

“(C) the Central Intelligence Agency;

“(D) the National Security Agency;

“(E) the Tennessee Valley Authority;

“(F) the Federal Labor Relations Authority;

or

“(G) the Federal Service Impasses Panel;

“(4) ‘labor organization’ means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

“(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

“(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

“(C) an organization sponsored by an agency; or

“(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

“(5) ‘dues’ means dues, fees, and assessments;

“(6) ‘Authority’ means the Federal Labor Relations Authority described in section 7104(a) of this title;

“(7) ‘Panel’ means the Federal Service Impasses Panel described in section 7119(c) of this title;

“(8) ‘collective bargaining agreement’ means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

“(9) ‘grievance’ means any complaint—

“(A) by any employee concerning any matter relating to the employment of the employee;

“(B) by any labor organization concerning any matter relating to the employment of any employee; or

“(C) by any employee, labor organization, or agency concerning—

“(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

“(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

“(10) ‘supervisor’ means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term ‘supervisor’ includes only those individuals who devote a preponderance of their employment time to exercising such authority;

“(11) ‘management official’ means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

“(12) ‘collective bargaining’ means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

“(13) ‘confidential employee’ means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

“(14) ‘conditions of employment’ means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

“(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

“(B) relating to the classification of any position; or

“(C) to the extent such matters are specifically provided for by Federal statute;

“(15) ‘professional employee’ means—

“(A) an employee engaged in the performance of work—

“(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

“(ii) requiring the consistent exercise of discretion and judgment in its performance;

“(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

“(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

“(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A) (i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

“(16) ‘exclusive representative’ means any labor organization which—

“(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

“(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

“(i) on the basis of an election, or

“(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

“(17) ‘firefighter’ means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

“(18) ‘United States’ means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

“(b) (1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

Presidential
order.

“(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.

Presidential
order.

5 USC 7104.

“§ 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.

“(c) (1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

“(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

“(A) the date on which the member's successor takes office, or

“(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

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

Report to
President.

“(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.

5 USC 7105.

“§ 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; Hearings.

“(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. 5 USC 3105.

“(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—

Hearings.

“(1) hold hearings;

Administer oaths.

“(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.

5 USC 7106.

“§ 7106. Management rights

“(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

“(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

“(2) in accordance with applicable laws—

“(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

“(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

“(C) with respect to filling positions, to make selections for appointments from—

“(i) among properly ranked and certified candidates for promotion; or

“(ii) any other appropriate source; and

“(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

“(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

“(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

- “(2) procedures which management officials of the agency will observe in exercising any authority under this section; or
- “(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

“SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

“§ 7111. Exclusive recognition of labor organizations

5 USC 7111

“(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—

Petition.

“(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 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.

Hearing.

Election.

“(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.

5 USC 7112.

§ 7112. Determination of appropriate units for labor organization representation

“(a) (1) 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—

Post, 1215.

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

“(2) a confidential employee;

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

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

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

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

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

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

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

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

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

“§ 7113. National consultation rights

5 USC 7113.

“(a) (1) 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.

5 USC 7114.

“§ 7114. Representation rights and duties

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

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

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

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

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

“(ii) the employee requests representation.

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

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

“(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

“(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

“(B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

“(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

“(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

“(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

“(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

“(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

“(A) which is normally maintained by the agency in the regular course of business;

“(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

“(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

“(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

“(c) (1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

“(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

“(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

“(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

“§ 7115. Allotments to representatives

5 USC 7115.

“(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.

5 USC 7116.

“§ 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.

Ante. p. 1114.

“(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.

“§ 7117. Duty to bargain in good faith; compelling need; duty to consult 5 USC 7117.

“(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.

Hearing.

“(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.

Appeal.

“(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.

Petition.

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

“(A) file with the Authority a statement—

“(i) withdrawing the allegation; or

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

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

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

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

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

“(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation

rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

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

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

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

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

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

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

§ 7118. Prevention of unfair labor practices

5 USC 7118.

"(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

Regulations.

Hearing.

5 USC 551.

Transcript.

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.

Rules and regulations, interpretation.

5 USC 7119.

“(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

“§ 7119. Negotiation impasses; Federal Service Impasses Panel

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

Membership.

“(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—

Investigation.

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

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

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

“(i) hold hearings;

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

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

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

5 USC 7120.

“§ 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.

Filing of reports.

“(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.

Regulations.

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

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

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

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

“(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

“(2) take any other appropriate disciplinary action.

“SUBCHAPTER III—GRIEVANCES

“§ 7121. Grievance procedures

5 USC 7121.

“(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) and (e) of this section, the procedures shall be the exclusive 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) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

“(1) be fair and simple,

“(2) provide for expeditious processing, and

“(3) include procedures that—

“(A) 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;

“(B) 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

“(C) 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.

“(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

5 USC 7321.

Ante, p. 1114.

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.

Ante. p. 1140. “(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.

Ante. p. 1133, 1136. “(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.

Ante. p. 1138. “(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.

Ante. p. 1143.

5 USC 7122.

“§ 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 of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator’s final award. The award may include the payment of backpay (as provided in section 5596 of this title).

“§ 7123. Judicial review; enforcement

5 USC 7123.

“(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. Petition.

“(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,

5 USC 706.

shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

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

“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

5 USC 7131.

“§ 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.

5 USC 7132.

“§ 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—

5 USC 3105.

“(1) issue subpoenas 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.

“§ 7133. Compilation and publication of data

5 USC 7133.

“(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.

5 USC 552, 552a.

“§ 7134. Regulations

5 USC 7134.

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

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

5 USC 7135.

“(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

5 USC 7301 note.
7701 note.

of this chapter or by regulations or decisions issued pursuant to this chapter.”.

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code is amended to read as follows:

“(b) (1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

“(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

“(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

“(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7701 (g) of this title; and

“(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

“(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

“(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

“(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

“(3) For the purpose of this subsection, ‘grievance’ and ‘collective bargaining agreement’ have the meanings set forth in section 7103 of this title, ‘unfair labor practice’ means an unfair labor practice described in section 7116 of this title, and ‘personnel action’ includes the omission or failure to take an action or confer a benefit.”.

Ante., p. 1191.

Ante., p. 1138.

5 USC 5551,
5552.

Ante., p. 1192.

H.R. 4336, 98th C.

Ninety-eighth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-third day of January,
one thousand nine hundred and eighty-four*

1621
22 FEB REC'D

An Act

To make certain miscellaneous changes in laws relating to the civil service.

*Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Service Miscellaneous Amendments Act of 1983".

REAPPOINTMENT OF FORMER ADMINISTRATIVE LAW JUDGES

SEC. 2. Section 3323(b) of title 5, United States Code, is amended to read as follows:

"(b)(1) Notwithstanding other statutes, an annuitant as defined by section 8331 of this title receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) of this subsection, serves at the will of the appointing authority.

"(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph."

FEDERAL LABOR RELATIONS AUTHORITY

SEC. 3. (a) Section 7104(b) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "The Chairman is the chief executive and administrative officer of the Authority."

(b) Section 7104(c) of title 5, United States Code, is amended to read as follows:

"(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

H. R. 4336—2

“(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.”.

ARBITRATION AWARDS

SEC. 4. Section 7122(b) of title 5, United States Code, is amended to read as follows:

“(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).”.

EXECUTIVE EXCHANGE PROGRAM

SEC. 5. (a) Section 4108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

“(d) For purposes of this section, ‘training’ includes a private sector assignment of an employee participating in the Executive Exchange Program of the President’s Commission on Executive Exchange.”.

(b)(1) Section 1304(e)(1) of title 5, United States Code, is amended—

(A) by striking out clause (ii); and

(B) by striking out “(i)”.

(2) Section 4109 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

“(d)(1) The revolving fund referred to in section 1304(e)(1) of this title shall be available to the Executive Exchange Program of the President’s Commission on Executive Exchange without fiscal year limitation—

“(A) for the costs of education and related travel of participants in such program; and

“(B) for printing, without regard to section 501 of title 44; and

“(C) in such amounts as may be specified in appropriations Acts, for entertainment expenses.

“(2) Participation fees which the President’s Commission on Executive Exchange may impose and collect for participation in its Executive Exchange Program (including the balance of any participation fees collected under former section 1304(e)(1)(ii) of this title as of the effective date of this subsection) shall be credited to the revolving fund.”.

H. R. 4336—3

AUTHORITY TO CONTINUE DEMONSTRATION PROJECT

SEC. 6. The Department of the Navy is authorized to continue operation of the personnel demonstration project authorized by section 4703 of title 5, United States Code, at the Naval Weapons Center, China Lake, California, and at the Naval Ocean Systems Center, San Diego, California, until September 30, 1990, without regard to section 4703(d)(1) of such title.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Presidential Documents

Title 3—

Executive Order 12871 of October 1, 1993

The President

Labor-Management Partnerships

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

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the executive branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

Section 1. THE NATIONAL PARTNERSHIP COUNCIL. (a) *Establishment and Membership.* There is established the National Partnership Council ("Council"). The Council shall comprise the following members appointed by the President:

- (1) Director of the Office of Personnel Management ("OPM");
 - (2) Deputy Secretary of Labor;
 - (3) Deputy Director for Management, Office of Management and Budget;
 - (4) Chair, Federal Labor Relations Authority;
 - (5) Federal Mediation and Conciliation Director;
 - (6) President, American Federation of Government Employees, AFL-CIO;
 - (7) President, National Federation of Federal Employees;
 - (8) President, National Treasury Employees Union;
 - (9) Secretary-Treasurer of the Public Employees Department, AFL-CIO;
- and
- (10) A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively "agency"), not otherwise represented on the Council.

Members shall have 2-year terms on the Council, which may be extended by the President.

(b) *Responsibilities and Functions.* The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:

- (1) supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;

(2) proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;

(3) collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;

(4) utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and

(5) working with the President's Management Council toward reform consistent with the National Performance Review's recommendations throughout the executive branch.

(c) *Administration.* (1) The President shall designate a member of the Council who is a full-time Federal employee to serve as Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.

(2) Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.

(3) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(4) Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.

(5) All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may request.

(d) *General.* (1) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

(2) Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.

(3) The Council shall exist for a period of 2 years from the date of this order, unless extended.

(4) Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special Government employees for any purpose.

Sec. 2. IMPLEMENTATION OF LABOR-MANAGEMENT PARTNERSHIPS THROUGHOUT THE EXECUTIVE BRANCH. The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

(a) create labor-management partnerships by forming labor-management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform Government;

(b) involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;

(c) provide systematic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are

Federal employees) in consensual methods of dispute resolution, such as alternative dispute resolution techniques and interest-based bargaining approaches;

(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same; and

(e) evaluate progress and improvements in organizational performance resulting from the labor-management partnerships.

Sec. 3. NO ADMINISTRATIVE OR JUDICIAL REVIEW. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.



THE WHITE HOUSE,
October 1, 1993.

[FR Doc. 93-24751
Filed 10-4-93; 5:00 pm]
Billing code 3195-01-M

APPENDIX C

FREQUENTLY USED TERMS IN LABOR MANAGEMENT RELATIONS

AGREEMENT (OR CONTRACT): A written agreement between an employer (agency) and a union, defining conditions of employment; rights of employees, union, and management; and procedures to be followed in settling disputes arising over the application of the contract.

APPEAL RIGHT: A term used to describe an employee's right to refer a decision on an item covered by statutory regulations to a higher authority--for example: Adverse actions, RIF, job classification, actions based on unacceptable performances.

ARBITRATION: The settling of employment disputes by presentation of the facts by both parties to the dispute to an impartial third party (arbitrator, arbiter) whose decision is final and binding.

BARGAINING UNIT: The positions and the employees in them, whom the union may represent in collective negotiation with management. The unit includes both members and nonmembers of a union. A group of employees with a clear and identifiable community of interest and which promotes effective dealings and efficiency of operations.

CERTIFICATION: Formal designation by the Federal Labor Relations Authority that a union has received a majority of the votes cast in a representation election and is to act as the exclusive representative for all employees in the bargaining unit.

CHECK-OFF (PAYROLL DEDUCTION OF DUES): An agreement between union and management whereby the installation withholds union dues from the member's paycheck and transfers that amount directly to the union.

COLLECTIVE BARGAINING: The process whereby employees (or their exclusive representative) and the employer reach agreement on the conditions of their employment relationship. These conditions are usually formalized into an agreement or contract.

EXCLUSIVE REPRESENTATIVE: An employee organization which has been elected by the employees of a bargaining unit. It is the only organization which is entitled to act for and to negotiate agreements for all employees in the unit.

FEDERAL LABOR RELATIONS AUTHORITY (FLRA): The FLRA is the central authority for the Federal labor-management program. The FLRA administers and interprets the Statute, decides major policy issues, makes bargaining unit determinations, supervises elections, decides unfair labor practice complaints, and makes decisions on other matters outlined in Section 7105 of the Statute.

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS): An independent Federal agency which assists management (in both the private and public sectors) and unions when an impasse is reached in a negotiation dispute. The FMCS serves in an advisory and guidance role and does not have the authority to mandate settlement.

FEDERAL SERVICE IMPASSES PANEL (FSIP): The FSIP is an agency within the FLRA consisting of at least three members appointed by the President. When the services of the FMCS or other third-party mediation fail to break a bargaining impasse, the FSIP may consider the dispute. The panel may take whatever action it considers necessary to settle the impasse--for example, authorizing arbitration or third-party factfinding.

GRIEVANCE PROCEDURES

NEGOTIATED GRIEVANCE PROCEDURE (NGP): A formal plan agreed upon by management and the union for use by employees or the union in the adjustment of grievances.

AGENCY GRIEVANCE PROCEDURE: A formal procedure established by an agency for use of its employees to settle their grievances. This grievance procedure may not be used for items that are covered by the statutory appeals processes, discrimination complaints system, or the negotiated grievance procedure.

LOCAL UNION: Labor organization comprising the members of a union within a particular area or establishment, which has been charter affiliated with, a national or international union.

NATIONAL REPRESENTATIVE: Generally, a full-time employee of a national union whose duties include assisting in the formation of local unions, assisting in negotiations and grievance settlements, etc.

REPRESENTATION ELECTION (ELECTION): Election conducted to determine whether the employees in an appropriate bargaining unit desire an organization to act as their exclusive representative.

SHOP STEWARD (UNION STEWARD): A local union's representative in a section or department elected by union members (or sometimes appointed by the union) to carry out union duties, adjust grievances, collect dues, and solicit new members. Shop stewards are usually fellow employees.

UNFAIR LABOR PRACTICE: Action by either an employer or employee organization which violates certain provisions of the Statute, such as a refusal to bargain in good faith.

UNION: Any organization in which workers participate as members, which exists for the purpose of dealing with employers concerning grievances, wages, hours, and conditions of employment. A union is not restricted to members of the bargaining unit.

The proponent of this pamphlet is the Directorate of Civilian Personnel. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander, U.S. Army Medical Department Center and School and Fort Sam Houston, ATTN: MCGA-CP, Fort Sam Houston, TX 78234-5014.

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