

## Collective Bargaining [18]

NOTE: The content of this document has not been reviewed by legal counsel, nor does it represent a consensus view of the Design Team or indicate any kind of preference among options presented to the Senior Review Committee.

### Summary Description:

- Negotiated collective bargaining agreements would establish all pay, classification and performance management systems for all bargaining unit employees.
- This could include negotiations over actual rates of pay, the size of a pay increase or a process such as a survey where pay is determined.
- Management would determine pay, classification and performance management systems for non-unit employees.
- The systems for unit and non-unit employees could be similar.

### Key Features:

#### Coverage:

This option is designed to cover all bargaining unit employees.

- Negotiations would take place between management and exclusive representatives. Details including ground rules for negotiations, duration of contract, etc would be decided by the parties.
- Bargaining options would include: (1) Nationwide multi-union/unit bargaining, or (2) individual unions bargaining on behalf of the specific employees they represent.
- A method of resolving bargaining impasses would need to be established.
- Current systems would remain in place until new systems are negotiated.

### Sub-Options:

- Wage grade and GS systems could be negotiated at the same time.
- Full broad scope bargaining on all issues could address labor relations, discipline, adverse actions, appeals and all other working conditions items.
- The size of the annual increase would not be negotiable, but the process for distributing payroll money within a bargaining unit would be negotiable.

### Relation to Other Options:

- This option is inconsistent with labor relations options that limit collective bargaining.

**Implications** (This section contains "possible advantages/benefits" and "possible problems/challenges" and "other implications" suggested by design team members. The views expressed in these "implications" represent the opinions of one or more members of the design team and therefore reflect sometimes opposing points of view. These opinions do not reflect the collective judgment of the entire design team on any of the issues addressed, nor have they been reviewed by legal counsel.):

#### Possible Advantages/Benefits

- Can provide for a regular review and evaluation of pay, classification and performance management systems as contracts are renegotiated.
- Could provide significant system design flexibility for DHS within a time tested framework – contracts negotiated every 1-5 years.
- Adopts model which some believe has been successful in private sector, State and local government

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and some Federal agencies, such as the U.S. Postal Service.

- Can promote employee and union acceptance of systems through a democratic ratification process.
- Some believe that bargaining should be expanded whenever management has greater flexibility.
- Bargaining might provide an effective method of controlling costs while providing an understandable pay system.

### Possible Problems/Challenges

- There is no provision in this option for approval of pay system bargaining agreements by Congress. However, negotiated agreements will have clear implications for appropriations.
- National security concerns in addressing the continued threat of terrorism in our homeland necessitate that management be provided with the ability to determine when it is appropriate to make quick decisions, especially in the deployment of resources, without the impediment of drawn out resource-intensive collective bargaining procedures either pre- or post-implementation and the subsequent dealing with a myriad of time-consuming grievances. Inclusion of any collective bargaining in assignment of work or location in deploying resources could adversely impact the mission of DHS.
- An effective and meaningful collective bargaining relationship over matters of pay, performance and classification would require disclosure to unions of information that is either classified or law enforcement sensitive and would likely result in operational security concerns.
- This would be a dramatic change and may be viewed as contrary to the intent of Congress, which provided DHS with flexibility to establish new pay systems through a collaborative process that falls short of collective bargaining. (See 5 U.S.C. 9701(e).)
- There could be a significant administrative burden on components that might have to administer multiple pay, classification and performance systems.
- Automated systems would have to be programmed to accommodate employees under multiple pay, classification and performance systems.
- Some believe that this would set an undesirable precedent for other Federal agencies.
- The system could limit the control of management, which has ultimate responsibility to ensure mission accomplishment, to determine the best methods of accomplishing work.
- The Federal Government's experience with collective bargaining over pay provides some evidence that collective bargaining may result in significantly higher salaries. Bargaining over pay may result in decisions not based on mission needs, staffing requirements, or taxpayer interests.
- Collective bargaining may result in very complex pay systems. The complexity will be magnified as multiple pay systems are created through collective bargaining.
- Collective bargaining may result in pay systems that are less flexible than the current system. (The Homeland Security Act stated that a system established under section 9701 should be flexible.)
- Collective bargaining may result in disparities between groups of employees in different parts of DHS, including disparities between bargaining/non-bargaining unit employees and between employees of different bargaining units. This could create competition between different parts of DHS.
- Collective bargaining over pay may be highly disruptive and distract the workforce from focusing on the mission.

### Other Implications

- This system would require a timely impasse resolution process to ensure that negotiation of new pay, performance and classification systems is completed in a timely manner.
- Managers, supervisors, union representatives, HR staff, and employees would need regular training regarding the terms of agreements.
- Continuing training would be needed on collective bargaining, dispute resolutions etc. In this regard,

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there may be substantial training already available.

### Cost

- Costs of negotiations.
- Cost of implementation (could vary greatly depending on system(s) negotiated).
- Administrative costs of maintaining multiple pay, classification, and performance systems.

### **Evaluation in Terms of Guiding/Design Principles:**

#### Mission Centered

- Collective Bargaining would permit the mission of DHS to be a central consideration in all negotiations about pay, classification, performance management.

#### Performance Focused

- Performance issues could be thoroughly discussed and agreed to in negotiated agreements.

#### Contemporary and Excellent

- Collective bargaining is currently being used by companies and public institutions in the country that some view as among the most successful and innovative.

#### Generate Trust and Respect

- An ongoing and mature bargaining relationship could promote trust and respect, where the parties recognize that they have mutual interests which can best be addressed together.

#### Based on Merit System Principles and Fairness

- Negotiated agreements may promote fairness and could be consistent with merit system principles for employees under the agreements.

### **Transition & Implementation:**

- To the extent that the creation of DHS and subsequent reorganization of many components may have resulted in inappropriate bargaining units, representation for these employees should be clarified prior to implementation of this system.