

Rights and Responsibilities Under the Labor Relations Statute

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Employee Rights

5 USC 7102

- Form, join or assist a union
- Refrain from joining a union
- Freedom from penalty or reprisal
- Rights protected

Employee Rights

- Act as a representative of the union
 - Present union's views
 - Engage in negotiations

Union Rights

5 USC 7114

- Act for and negotiate contracts for all employees in the unit
- Represent the interests of all employees in the unit
- Receive data/information

Union Rights

- To be represented at formal discussions
- To be represented, under certain conditions, at investigations

Right to Information

5 USC 7114(b)(4)

- Upon request
- If not prohibited by law
- Normally maintained in regular course of business
- Reasonably available
- No cost

Right to Information

Reasonably Available

- Whether providing the information would be too burdensome
- Data excluded if available only through “extreme or excessive means”
- Management must present evidence to prove burden

Right to Information

- Necessary for discussion, understanding, and negotiation of subjects within scope of collective bargaining
- Not entitled to management guidance, advice, counsel or guidance relating to collective bargaining
- Collective bargaining includes full range of union's responsibilities

Right to Information

- Union request must be specific
- Generalized assertions not sufficient
- Must established “particularized need” for the information

Particularized Need

- Why the union needs the information
- How the union will use the information
- How articulated use of the information relates to the union's representational duties under the statute

Right to Information Management Response

- Cannot say “no.”
- Must explain countervailing interest to particularized need, and/or
- Other reasons under statute for not disclosing information

Right to Information Privacy Act Bar

- Information sought is contained in Privacy Act system of records
- Disclosure would violate employee privacy interests
- Nature and significance of the privacy interests

Formal Discussion

Elements of Formality

- Discussion
- Formal in nature
- Between at least one or more agency representatives and one or more unit employees or their representatives
- Concerning any grievance or personnel policy or practices or other general condition of employment

Formal Discussion

- Meeting may be formal without an actual discussion, debate or dialogue.

Formal Discussion

Illustrative Factors

- Official who held the meeting
- Whether other management representatives attended
- Length of meeting
- Written agenda
- Attendance mandatory or voluntary

Formal Discussion Illustrative Factors

- Where the meeting was held
- Notes taken during the meeting
- Manner in which the discussions were conducted

Formal Discussion

Notice to Union

- Union must be invited.
- “Actual” notice versus “formal” notice
- “Actual” representation is not sufficient
- Union chooses who will receive notice
- Union chooses who will attend meeting

Formal Discussion

Scheduling the Meeting

- Management chooses when to schedule meeting and where it will be held.
- Management determines purpose and content of meeting
- Sufficient notice to allow union to designate representative and to attend.

Formal Discussion

Union Role

- More than a mere presence
- Rule of reasonableness
- Actively participate on behalf of unit employees
- Present institutional views
- Can speak, comment and make statements
- Cannot disrupt the meeting

Formal Discussion Management Role

- Conduct the meeting
- Communicate directly with employees

Investigatory Examinations

Weingarten Right

Elements of Weingarten

- Meeting between employee and agency representative
- Meeting must be examination in connection with an investigation
- Employee must reasonably fear discipline
- Employee must request representation

Weingarten

Meeting Participants

- Only applies to a representative of the union and bargaining unit employee
- Office of Inspector General investigators are representatives of the agency

Weingarten

Factors for “Examination”

- Purpose of meeting ask questions and solicit information
- Meeting conducted in a confrontational manner
- Intent to secure admission of guilt
- Requirement for employee to explain what occurred

Performance Counseling

- Counseling session – Manager's concern over quality, quantity or timeliness of work
- No Weingarten right
- Meeting could develop into examination

Conduct Counseling

- Weingarten could apply if there is an interrogation.

Weingarten

Reasonable Belief of Discipline

- Based on objective factors rather than subjective
- Possibility exists in employee's mind
- What management contemplates may be different
- Immunity

Weingarten

Valid Request for Representation

- Grant the request
- Discontinue the interview
- Offer choice between continuing the interview without representation or having no interview

Weingarten

Role of Representative

- Active role
- May or may not include right to caucus with employee in private
- Cannot interfere with investigation
- Cannot compromise integrity of investigation

Management Rights

5 USC 7106

- Rights reserved to management officials by the Federal Service Labor-Management Relations Statute
- Essential management functions not subject to bargaining

Reserved Management Rights

7106(a)(1) & (2)

Management determines:

- Mission
- Budget
- Organization
- Number of employees
- Internal security practices

Reserved Management Rights

- Hire
- Assign
- Direct
- Layoff
- Retain

Reserved Management Rights

- Take disciplinary action
- Assign work
- Contract out
- Determine personnel by which agency operations shall be conducted

Reserved Management Rights

- Select employees
- Take necessary actions to carry out agency mission during an emergency

Management Rights Permissive Subjects

- 7106(b)(1)
- Numbers, types, and grades of employees or positions assigned to an organizational subdivision, work project or tour of duty
- Technology, methods and means of performing work

Management Rights

- Procedures management will observe in exercising its rights 7106(b)(2)
- Appropriate arrangements for employees adversely affected 7106(b)(3)

Appropriate Arrangements

- Determine which management right is being exercised.
- Determine the adverse effects on employees that result from exercise of management's right.
- Adverse effects cannot be speculative or hypothetical.

Appropriate Arrangements

- Union proposal must be tailored only to employees who are adversely effected.
- Proposal must seek to mitigate the adverse effect.
- Determine whether proposal excessively interferes with management right.

Appropriate Arrangements

- Weigh the benefits of the arrangement to employees against the intrusion on the exercise of management's rights.

Collective Bargaining

Duty to Bargain

- Concerns “when” and “whether” labor and management are required to bargain.

Situations Requiring Duty to Bargain

- Term negotiations for a contract
- Union-initiated midterm proposals
- Change bargaining

Change Bargaining

- Management is required to notify the union and bargain as appropriate prior to implementing changes in conditions of employment that are within the scope of bargaining.

Change Bargaining

- No bargaining on substance of the change when exercising a reserved management right.
- Must bargain procedures to implement decision and appropriate arrangements for employees adversely affected.
- De minimis standard

Change Bargaining

- Where the change is substantively negotiable, management must bargain on the decision to make the change.

Scope of Bargaining

- Concerns “what” labor and management are required bargain.
- Only required to bargain matters that concern conditions of employment.

Conditions of Employment

- Personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions.