



Administration
& Management

OFFICE OF THE SECRETARY OF DEFENSE

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August 26, 1996

ADMINISTRATIVE INSTRUCTION NO. 99

SUBJECT: Labor-Management Relations

References: (a) Executive Order 12171, "Exclusions from the Federal Labor-Management Relations Programs," as amended November 19, 1979
(b) Executive Order 12391, "Partial Suspension of Federal Service Labor-Management Relations," November 4, 1982

1. PURPOSE

This Instruction:

1.1. Implements DoD policy, procedures, authorities and responsibilities for the Federal labor-management relations program as contained in Subchapter 711 at enclosure 2.

1.2. Identifies additional labor-management relations requirements.

2. APPLICABILITY AND SCOPE

Except where specifically excluded by references (a) or (b), this Instruction applies to all organizational entities of the Office of the Secretary of Defense (OSD) and all other activities that receive administrative support from the Washington Headquarters Services (WHS).

3. DEFINITIONS

Terms used in this Instruction are defined at enclosure 2.

4. POLICY

It is DoD policy that individuals designated as "chief negotiators for management negotiating teams," receive appropriate negotiation training prior to assuming duties as a negotiator unless he or she is experienced in labor negotiations.


5. RESPONSIBILITIES

5.1. The Head of an organization where an exclusive employee representative (bargaining unit) has been recognized is responsible for implementation of the labor-management relations program in his or her organization.

5.2. The Assistant Director, Labor and Management Employee Relations, Personnel and Security Directorate, Washington Headquarters Services, shall provide guidance, assistance, and advice on the labor-management relations program.

6. EFFECTIVE DATE

This Instruction is effective immediately.


D.G. Cooke, Director
Administration and Management

Enclosures - 2

- E1. Table of Contents for Enclosure 2
- E2. Subchapter 711 Labor-Management Relations

E1. ENCLOSURE 1

SUBCHAPTER 711
LABOR-MANAGEMENT RELATIONS
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E2. ENCLOSURE 2

SUBCHAPTER 711
LABOR-MANAGEMENT RELATIONS

- References:
- (a) DoD Directive 1400.25, "Department of Defense Civilian Personnel Management System," November 25, 1996
 - (b) Chapter 71 of title 5, United States Code, "Labor-Management Relations"
 - (c) Executive Order 12871, "Labor-Management Partnerships," October 1, 1993
 - (d) Public Law 96-70, "The Panama Canal Act of 1979," September 27, 1979
 - (e) Executive Order 12171, "Exclusions From the Federal Labor-Management Relations Program," as amended, November 19, 1979
 - (f) DoD Instruction 1400.10, "Employment of Foreign Nationals in Foreign Areas," December 5, 1980
 - (g) Executive Order 12391, "Partial Suspension of Federal Service Labor-Management Relations," November 4, 1982
 - (h) DoD 7000.14-K, "Department of Defense Financial Management Regulation," Volume 8, "Civilian Pay Policy and Procedures," June 1994
 - (i) 5, Code of Federal Regulations, Chapter XIV, "Regulations of the Federal Labor Relations Authority (FLRA), General Counsel of the Federal Labor Relations Authority, and Federal Service Impasses Panel (FSIP)"
 - (j) Chapter 73 of title 5, United States Code, "Suitability, Security, and Conduct"
 - (k) Section 1918 of title 18, United States Code
 - (l) 29, Code of Federal Regulations, Parts 1404 and 1425, "Regulations of the Federal Mediation and Conciliation Service (FMCS)"
 - (m) Chapter 77 of title 5, United States Code, "Appeals"
 - (n) 29, Code of Federal Regulations, Parts 457-459, "Regulations of the Assistant Secretary of Labor for the American Workplace"

A. PURPOSE

This subchapter implements policies under references (a) through (n), prescribes procedures, delegates authority, and assigns responsibility for the Federal labor-management relations program within the Department of Defense (DoD).

B. POLICY

It is DoD policy under DoD Directive 1400.25 (reference (a)) to establish labor management relationships focused on supporting and enhancing the Department's national security mission and creating and maintaining a high performance workplace which delivers the highest quality products and services to the American public at the lowest possible cost. Such relationships should be committed to pursuing solutions that promote increased quality and productivity, customer service, mission accomplishment, efficiency, quality of work life, employee empowerment, organizational performance,

and military readiness. DoD Activities should seek to use consensual means of resolving disputes that may arise in a labor-management relationship.

C. RESPONSIBILITIES

1. The Deputy Assistant Secretary of Defense (Civilian Personnel Policy) (DASD)(CPP) shall issue labor relations policies and procedures, coordinate labor-management relations programs and activities throughout the Department, and provide guidance on labor-management relations issues. The DASD(CPP) shall be the Department's primary point of contact with the Federal Labor Relations Authority (FLRA) and shall authorize the submission of documents to the Authority as provided for in this subchapter (see paragraphs F.6.c., d. and f., below).

2. The Heads of the DoD Components shall ensure the labor-management relations program is implemented in their organizations.

D. DEFINITIONS

The terms defined in 5 U.S.C. 7103 (reference (b)) have the same definitions when used in this Subchapter.

1. Employee. The definition of employee in 5 U.S.C. 7103(a)(2) (reference (b)) includes civilian employees paid from nonappropriated fund instrumentalities (NAFIs), including off-duty military personnel with respect to employment with a DoD NAFL, when such employment is civilian in nature and separate from any military assignment. Military personnel are not "employees" for purposes of this Subchapter with respect to any matter related to their military status or assignment. Contractor personnel also are not covered by the definition of employee. Pursuant to Pub.L. 96-70 (1979), Section 1271(a) (reference (d)), the definition of employee includes non-U.S. citizen employees of the DoD in the Panama Canal area.

2. Primary National Subdivisions. DoD primary national subdivisions are the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of State the Military Departments, the Defense Agencies (except the National Security Agency and those that the President has excluded from coverage by E.O. 12171 (reference (e))), the National Guard Bureau, the Army and Air Force Exchange Service, and the Department of Defense Education Activity.

E. COVERAGE

The Federal labor-management relations program and this Subchapter apply to all the DoD Components, including nonappropriated find instrumentalities under their jurisdiction, except for the following:

1. The National Security Agency (see 5 U.S.C. 7103(a)(3)(D) (reference (b)));

2. Those DoD fictional or organizational entities the President has excluded from coverage under E.O. 12171 (reference (e)); and

3. Non-U.S. citizen personnel employed at DoD activities except for those in the Republic of Panama. Relationships with unions representing such non-U.S. citizens shall be consistent with pertinent intergovernmental agreements, local practices, customs, and DoD Instruction 1400.10 (reference (f)).

Provisions of Chapter 71 of U.S.C. 5 (reference (b)) shall not apply to any DoD entities located outside the 50 States and the District of Columbia where the President has suspended them under E.O. 12391 (reference (g)). This Subchapter shall be applied consistent with such suspensions.

F. PROCEDURES

1. Dues Withholding. DoD activities shall withhold union dues by allotment consistent with the requirements of 5 U.S.C. 7115 (reference (b)) and DoD 7000.14-R Vol. 8 (reference (h)).

2. Right of Representation. As required by 5 U.S.C. 7114(a)(3) (reference (b)), DoD activities shall inform bargaining unit employees annually of their right to union representation under 5 U.S.C. 7110 (reference (b)).

3. Agreement Review

a. The Defense Civilian Personnel Management Service (CPMS) shall review and approve or disapprove agreements pursuant to 5 U.S.C. 7114(c) (reference (b)).

b. DoD activities should provide CPMS with one copy of agreements, or supplements to agreements, once negotiations are completed in order to facilitate the review and provide CPMS an opportunity to address issues prior to execution of the agreement.

c. Activities shall forward one copy of executed agreements, or supplements agreements, to CPMS immediately upon execution. The transmittal letter shall indicate the specific date the agreement was executed, the name and address of the labor organization's designated representative, and the name and phone number of an activity point of contact.

d. Immediately upon publication, DoD activities shall provide CPMS with two copies of published agreements, or supplements to agreements, together with Office of Personnel Management (OPM) Form 913-B. CPMS will provide one copy to OPM (see paragraph F.10., below, regarding this reporting requirement). Activities shall also provide a copy to their appropriate Component headquarters.

e. Local agreements subject to a national or other controlling agreement at a higher organizational level shall be approved under the procedures of the controlling agreement. Where no such procedures exist, a local agreement shall be reviewed under the procedures in this subsection.

f. DoD activities shall provide CPMS and their appropriate Component headquarters with OPM Forms 91 3-B concerning changes in agreement expiration dates. CPMS will forward this information to OPM (see paragraph F.10., below, regarding this reporting requirement).

4. Exclusions from Coverage of the Federal Labor-Management Relations Program

a. The President may issue an order under 5 U.S.C. 7103(b)(1) (reference (b)) excluding DoD functional or organizational entities from coverage under the Federal labor-management relations program if the President determines:

(1) They have as a primary function intelligence, counterintelligence, investigative, or national security work; and

(2) The provisions of the program cannot be applied to them in a manner consistent with national security requirements and considerations.

b. DoD activities shall forward requests for such exclusions, with fully developed supporting rationale, through channels to the DASD(CPP) for appropriate action. Requests shall include information on the numbers, types and grades of civilian employees involved and on whether they are represented by a union.

5. Suspension of Provisions of the Federal Labor-Management Relations Program

a. Under 5 U.S.C. 7103(b)(2) (reference (b)), the President may issue an order suspending any provision of the Federal labor-management relations program with respect to DoD fictional or organization entities outside the 50 States and the District of Columbia if the President determines the suspension is necessary in the interest of national security. Under this authority, the President issued E.O. 12391 (reference (g)) which prohibits dealings on labor relations matters that would substantially impair DoD's implementation of any treaty or agreement and allied minutes or understandings between the United States and host nations.

b. DoD activities shall direct requests to effect a suspension under E.O. 12391 (reference (g)) through channels to the Secretary of Defense through the Under Secretary of Defense (Personnel and Readiness) (USD(P&R)). The appropriate Under Secretary of Defense or Assistant Secretary of Defense shall endorse requests for suspensions in the Office of the Secretary of Defense. Component Heads shall sign requests from their organizations. Each request shall fully document the collective bargaining issue or dispute involved, identify the bargaining unit, and demonstrate how the labor relations

matter would substantially impair implementation of a specific treaty or international agreement. The Secretary of Defense, after consultation with the Secretary of State, or designee, shall make the final decision on the suspension.

6. Processing Cases under the 5 CFR Chapter XIV Regulations of the Federal Labor Relations Authority (FLRA), the FLRA General Counsel and the Federal Service Impasses Panel (FSIP) (reference (i))

a. Representation Cases

(1) DoD activities shall follow the procedures in the regulations of the FLRA governing representation proceedings (5 CFR 2422 (reference (i))).

(2) Proposed units that would encompass employees in two or more DoD Components or employees under different personnel systems generally are not appropriate. Where a union files a representation petition involving the creation of such a bargaining unit, the DoD activity involved shall immediately provide CPMS and the appropriate Component headquarters with a copy of the petition. The DoD activity shall also provide those offices with the subsequent Regional Director's decision on the petition immediately upon receipt. The DoD activity shall coordinate with CPMS through their appropriate Component headquarters any application for review of a FLRA Regional Director's decision involving such a petition.

(3) DoD activities shall provide copies of FLRA Regional Director Decisions and Orders on new or revised units to CPMS and the appropriate Component headquarters.

(4) DoD activities shall provide CPMS with two copies of information on new, revised, or terminated units. Activities shall also provide a copy to the appropriate Component headquarters. OPM Form 913B shall be used to submit this data (see paragraph F.10., below, regarding this reporting requirement). CPMS will provide a copy to OPM.

b. Unfair Labor Practice Proceedings

(1) DoD activities shall follow the procedures in the regulations of the FLRA governing unfair labor practice proceedings (5 CFR 2423 (reference (i))). Where exceptions to an Administrative Law Judge (ALJ) decision are filed with the FLRA, the DoD activity will provide CPMS and the appropriate Component headquarters with a copy of the decision, the exceptions to the decision, and any subsequently filed documents. Documents shall be forwarded to those offices at the time they are filed with the FLRA or when they are received by the DoD activity.

(2) 5 U.S.C. 7311 (reference (j)) and 18 U.S.C. 1918 (reference (k)) prohibit Federal employees from striking against the Government of the United States.

Employees can be disciplined for engaging in such action. 5 U.S.C. 7116(b)(7) (reference (b)) proscribes strikes, work stoppages, slowdowns, and picketing that interferes with an agency's operations by unions representing DoD employees. Informational picketing, which does not disrupt agency operations or prevent public access to a facility, is not prohibited. CPMS and the appropriate Component headquarters shall be immediately notified when prohibited acts take place.

c. Review of Negotiability Issues

(1) DoD activities shall follow the procedures in the regulations of the FLRA governing the review of negotiability issues (5 CFR 2424 (reference (i))). Under these procedures, unions are required to request in writing an allegation that a proposal is outside the duty to bargain and the agency is required to respond in writing within 10 days from receipt of the union's request. Before making such a response, a DoD activity will consult with CPMS and its appropriate Component headquarters. If a union subsequently files a negotiability appeal with the FLRA, the appeal must be filed within 15 days after the date the allegation is served on the union, meet the other requirements in the FLRA's regulations, and be served on the Director, Workforce Relations, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy), 4000 Defense Pentagon, Room 3D269, Washington DC 20301-4000. The Director shall immediately provide a copy to CPMS and the affected DoD Component if they have not been served with a copy.

(2) CPMS shall develop an agency statement of position or shall coordinate on the agency statement of position when a DoD Component elects to prepare it. DoD Components shall immediately advise CPMS of their decision regarding preparation of the agency's statement of position.

d. Review of Arbitration Awards (except those involving performance-based or adverse actions)

(1) DoD activities shall follow the procedures in the regulations of the FLRA governing the review of arbitration awards (5 CFR 2425 (reference (i))).

(2) DoD activities shall contact CPMS and their appropriate Component headquarters when they believe an exception to an arbitration award should be filed with the FLRA. Where there appears to be a basis for filing an exception to an activity shall forward the award, the grievance file, the address of the arbitrator, and the name and address of the union representative in the proceeding to CPMS and the appropriate Component headquarters within 5 calendar days of receipt of the award. The activity shall forward the postmarked envelope in which the award was mailed (if delivered by mail) to CPMS. If the award is served by personal delivery, the date of receipt shall be stamped on the document. Where CPMS determines that an exception shall be filed, it shall develop and file the exception or shall coordinate on the exception when a DoD

Component elects to develop it. The DoD Components shall immediately advise CPMS of their decision regarding preparation of the agency's exception to the award.

(3) DoD activities shall forward a union-filed request for an exception to an arbitration award, together with the award and their position on the exception, to CPMS and their appropriate Component headquarters within 5 calendar days from receipt of the exception. When CPMS determines that an opposition shall be filed, it shall prepare the opposition or shall coordinate on the opposition when a DoD Component elects to prepare it. DoD Components shall immediately advise CPMS of their decision regarding preparation of the agency's opposition to the exception to the award.

e. National Consultation Rights

(1) The DoD and DoD primary national subdivisions shall follow the procedures in the regulations of the FLRA governing the granting and termination of national consultation rights (5 CFR 2426 (reference (i))).

(2) Upon written request by a union the DoD or a DoD primary national subdivision shall grant national consultation rights to the union when it meets the criteria in the regulations of the FLRA. The DoD or a DoD primary national subdivision shall terminate national consultation rights where a union no longer qualifies for such rights. The organization taking the action shall first serve the union with a notice of intent to terminate national consultation rights, together with a statement of reasons, not less than 30 days before the intended termination date.

(3) DoD primary national subdivisions shall provide CPMS with a copy of any letter granting or denying a union's request for national consultation rights or notifying a union of its intent to terminate national consultation rights.

f. General Statements of Policy or Guidance. DoD activities shall forward any recommendation that DoD seek a general statement of policy or guidance from FLRA as provided for by the FLRA's regulations (5 CFR 2427 (reference (i))) through channels to the DASD(CPP) for appropriate action. DoD activities shall immediately notify the DASD(CPP) of any referrals to FLRA for review and decision or general rulings under 5 CFR 2429.4 (reference (i)).

g. Negotiation Impasses. DoD activities shall follow the procedures in the regulations of the FSIP (5 CFR 2470 (reference (i))) and the FMCS (29 CFR 1404 and 1425 (reference (l))) governing resolving negotiation impasses.

7. Arbitration Awards Relating to Matters Described in 5 U.S.C. 7121(f) (reference (b))

a. Under 5 U.S.C. 7121(f) (reference (b)), exceptions to arbitration awards involving certain adverse actions or unacceptable performance actions may not be filed

with the FLRA. However, such awards are subject to judicial review in the same manner and on the same basis as if those matters had been decided by the Merit Systems Protection Board (MSPB).

b. The grounds and procedures for judicial review of a decision of the Board are set forth in 5 U.S.C. 7703 (reference (m)). Under that section, only the Director of the Office of Personnel Management (OPM) may seek judicial review of such matters. Where the Director did not intervene in the matter before the arbitrator, the Director must first petition the arbitrator for reconsideration of the award. To facilitate the Director's involvement, individuals representing DoD activities in an arbitration proceeding should instruct the arbitrator at the hearing to prepare an administrative record. The record should be maintained for at least 45 days from the date of the award.

c. DoD activities shall expeditiously submit requests for judicial review through channels to the Director of OPM for appropriate action. CPMS shall be provided a copy of any requests.

8. Standards of Conduct. The regulations of the Assistant Secretary of Labor for the American Workplace (29 CFR 457-459 (reference n)) implement 5 U.S.C. 7120 (reference (b)) which relates to the standards of conduct for labor organizations under Chapter 71 of 5 U.S.C. (reference (b)). Parties involved in such proceedings are responsible for following those regulations.

9. Judicial Review

a. Many final orders of the FLRA may be appealed to an appropriate United States Court of Appeals pursuant to 5 U.S.C. 7123 (reference (b)). To ensure consistency of interpretation and full consideration of the policy and program implications of such appeals, DoD activities shall forward requests for judicial review of decisions of the Authority, or requests to intervene in judicial proceedings, through channels to the Office of the Deputy General Counsel, Personnel and Health Policy (ODGC)(P&HP), DoD, for review and approval in coordination with CPP.

b. A DoD activity shall promptly notify the ODGC(P&HP) through channels upon learning that a union has initiated court action in a matter arising out of its relationship with the activity.

10. Reports. OPM requires that agencies provide two copies of arbitration awards and certain information concerning changes in exclusive bargaining units and collective bargaining agreements to: Office of Personnel Management; Chief Labor-Management Relations Division 1900 E Street, N.W., Washington, DC 20415-0001. OPM Form 913-B, which is used to report the information on units and agreements, is available from that Office. The assigned number for these reporting requirements is Interagency Report Control Number 1060-OPM-BI. DoD activities shall forward two copies of arbitration awards to that address. CPMS WN provide the other information required by OPM (see paragraphs F.3.d. and f. and F.6.a.(4), above).