USDA UNITED STATES DEPARTMENT OF AGRICULTURE

GLOSSARY OF LABOR RELATIONS TERMS

1. ABROGATION TEST

A test previously applied by the Federal Labor Relations Authority to determine whether an arbitrator's award enforcing a provision in a collective bargaining agreement is contrary to the Federal Service Labor-Management Relations Statute. When applying this test, the Authority will examine the provision enforced by the arbitrator to determine (1) if it constitutes an arrangement for employees adversely affected by the exercise of management's rights, and (2) if, as interpreted by the arbitrator, it abrogates the exercise of a management right. An award that abrogates management's rights precludes management from exercising these rights. An award does not abrogate the exercise of management's rights if it merely enforces an appropriate arrangement previously negotiated by the parties. [See 37 FLRA 309] The FLRA now uses the "excessive interference" test [See number 69 below and 58 FLRA 109].

2. ACCRETION

When some employees are transferred to another employing entity whose employees are already represented by a union, the FLRA will often find that those employees have "accredit" to (i.e., become part of) the existing **unit** of the new employer, with the result that the transferred employees have a new **exclusive representative** along with a new employer.

3. ACTIONS DURING EMERGENCIES

Management's right "to take whatever actions may be necessary to carry out the agency mission during emergencies" doesn't come up in negotiability disputes very often. In cases decided thus far, the FLRA has held that this right is interfered with by proposals attempting to define "emergency" because such definitions would be inconsistent with management's right to independently determine whether an emergency exists.

4. ADMINISTRATIVE LAW JUDGE (ALJ)

An individual who conducts certain hearings and makes initial decisions on behalf of the Federal Labor Relations Authority (FLRA). Most of the hearings are for the purpose of adjudicating unfair labor practice complaints. The decision of an ALJ is final and non-precedent setting unless one of the parties files an exception to the decision with the FLRA.

5. ADVERSE ACTION

An official personnel action, usually taken for disciplinary reasons, which adversely affects an employee and is of a severity such as suspension for more than 14 days, reduction in grade or status, or removal. For most Federal employees, an appeal system established by statute exists. The employee may choose to use the statutory procedure or, if coverage under the contract permits, the negotiated grievance procedure, but not both.

6. AGENCY HEAD REVIEW

A statutory requirement that negotiated agreements be reviewed for legal sufficiency by the head of the agency (or his/her designee). This must be accomplished within 30 days from the date the agreement is executed. If disapproved, the union can challenge those determinations by filing a **negotiability** petition or an **unfair labor practice** charge with the FLRA If not approved or disapproved within that time, the agreement goes into effect and the legality and enforceability of its terms is decided in other forums (e.g., grievance or unfair labor practice proceedings).

7. AGENCY SHOP

A requirement that all employees in the **unit** pay dues or fees to the union to defray the costs of providing representation.

8. AGREEMENT, NEGOTIATED

A collective bargaining agreement between the employer and the exclusive representative. A collective bargaining agreement must contain a negotiated grievance procedure.

9. AMENDMENT OF CERTIFICATION PETITION

That portion of the FLRA's multipurpose petition not involving a **question concerning representation** that may be filed at any time in which the petitioner asks the FLRA to amend the certification or recognition to, e.g., reflect changes in the names of the employer or the union.

10. AMERICAN ARBITRATION ASSOCIATION (AAA)

A private nonprofit organization that, among other things, provides lists of qualified arbitrators to unions and employers.

11. APPLICABLE LAWS

The Authority has said that "applicable laws" within the meaning of title 5, United States Code, section 7106(a)(2), include statutes, the Constitution, judicial

decisions, certain Presidential executive orders, and regulations "having the force and effect of law"--i.e., regulations that (1) affect individual rights and obligations, (2) are promulgated pursuant to an explicit or implicit delegation of legislative authority by Congress, and (3) satisfy certain procedural requirements, such as those of the Administrative Procedures Act.

12. APPROPRIATE ARRANGEMENT

A term that is used to describe a union proposal that directly interferes with management's statutory rights; however, the Federal Labor Relations Authority could determine the proposal to be negotiable as an "appropriate arrangement" under 5 U.S.C. 7106(b)(3). The Authority will determine whether a proposal is intended to be an arrangement for employees adversely affected by the exercise of management's rights. If it is found to be an arrangement, the Authority will determine whether a proposal "excessively" interferes with the exercise of management's rights. A proposal which totally abrogates the exercise of a management right will not constitute an appropriate arrangement because it would "excessively" interfere with management's statutory rights. If it does not excessively interfere with management's statutory rights, then it would be negotiable as an "appropriate arrangement."

13. APPROPRIATE UNIT OR APPROPRIATE BARGAINING UNIT

A group of employees which a labor union seeks to represent. The Federal Labor Relations Authority determines an appropriate unit to be one which (1) must have a clear and identifiable community of interest; (2) must promote effective dealings with the agency; and (3) ensure efficiency of the operations of the agency.

14. ARBITRATION

Method of resolving employment disputes through recourse to an impartial third party whose decision is usually final and binding. [See '**Interest Arbitration**,' '**Grievance Arbitration**,' and 5 U.S.C. 7121(b)]

15. ARBITRATOR

An impartial third party to whom disputing parties submit their differences for decision (award). An **ad hoc arbitrator** is one selected to act in a specific case or a limited group of cases. A **permanent arbitrator** is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

16. ARBITRABILITY

Refers to whether a given issue is subject to arbitration under the negotiated agreement. If the parties disagree whether a matter is arbitrable or not, the arbitrator must resolve this threshold issue before reviewing the merits of the dispute.

17. ASSIGN EMPLOYEES

A management right relating to the assignment of employees to positions, shifts, and locations. This right includes discretion to determine “the personnel requirements of the work of the position, i.e., the qualifications and skills needed to do the work, as well as such job-related individual characteristics as judgment and reliability." It also includes discretion to determine the duration of the assignment.

18. ASSIGN WORK

A management right relating to the assignment of work to employees or positions. The right to assign work includes discretion to determine who is to perform the work; the kind; the amount of work to be performed; the manner in which it is to be performed, as well as when it is to be performed. It also includes "[t]he right to determine the particular qualifications and skills needed to perform the work and to make judgments as to whether a particular employee meets those qualifications."

19. ATTORNEY FEES

In accordance with 5 U.S.C. 5596 (Back Pay Act), an award of counsel fees if there is a determination by an arbitrator or the Merit Systems Protection Board that an unjustified or unwarranted personnel action has resulted in the withdrawal of a grievant’s pay, allowances or differentials. The award must be in conjunction with an award of back pay on correction of the personnel action, the award must be reasonable and related to the personnel action, and the award must be in accordance with standards established under 5 U.S.C. 7701(g). Under 5 U.S.C. 7701(g), the employee, to obtain fees, must be the prevailing party, the award must be in the interest of justice (other than in a case involving discrimination), the fee must be reasonable, and it must have been incurred by the employee.

20. AUTOMATIC RENEWAL CLAUSE

Many, perhaps most, collective bargaining agreements in the Federal sector have a provision, usually located at the end of the agreement, stating that if neither party gives notice during the agreement's 105-60 day **open period** of its intent to reopen and renegotiate the agreement, the agreement will automatically renew itself for a period of x number of years.

21. AWARD

In labor-management arbitration, the final decision of an arbitrator, final and binding on both parties. In very limited circumstances, either party may appeal the arbitrator’s decision to the Federal Labor Relations Authority (e.g. award is contrary to law).

22. BACK PAY

Pay, allowances, or differentials awarded to an employee for compensation lost due to an unjustified or unwarranted personnel action.

23. BARGAINING (NEGOTIATING)

A ubiquitous process--sometimes informal and spontaneous, sometimes formal and deliberate--of offer and counteroffer whereby parties to the bargaining process try to reach agreement on the terms of exchange. Formal bargaining processes with associated rituals and bargaining routines vary, depending on their political, economic, and social context.

24. BARGAINING AGENT

The union holding exclusive recognition for an **appropriate unit.**

25. BARGAINING IMPASSE (IMPASSE)

When the parties have reached a deadlock in negotiations they are said to have reached an impasse. The statute provides for assistance by **Federal Mediation and Conciliation Service** mediators and the **Federal Service Impasses Panel** to help the parties settle impasses.

26. BARGAINING RIGHTS

Legally recognized right of the labor organization to represent employees in negotiations with employers.

27. BARGAINING UNIT

A group of employees recognized by the employer or group of employers, or designated by the Federal Labor Relations Authority as appropriate to be represented by a labor organization for purposes of collective bargaining. In the Federal sector, employees do not have to be dues paying members of a union in order to be represented by the union. [See **Appropriate Unit**. For a related term, see **Labor Organization.**]

28. BINDING ARBITRATION

The law requires that collective bargaining agreements contain a negotiated grievance procedure that terminates in binding arbitration of unresolved grievances.

29. BUDGET

A right reserved to management. The Authority has fashioned a two-prong test that it uses to determine whether a proposal interferes with an agency's right to determine its budget: namely, the proposal either has to prescribe particular programs, operations or amounts to be included in an agency's budget, or the agency can substantially demonstrate that the proposal would result in significant and unavoidable cost increases that are not offset by compensating benefits.

30. BYPASS

Dealing directly with employees rather than with the **exclusive representative** regarding negotiable **conditions of employment** of bargaining **unit** employees. A bypass is a violation of the **Federal Service Labor-Management Relations Statute**.

31. BUS CODE

A BUS code is a "bargaining unit status" code which is part of the six-digit number known to labor relations specialists as the LAIRS or OLMR number. The Office of Personnel Management (OPM) maintains a system in which bargaining units are identified and labor agreements are coded, called the Labor Agreement Information Retrieval System (LAIRS). In addition to the four-digit BUS code, the LAIRS number also includes a two-digit agency code. An example follows:

> LAIRS Number ***510151***: Agency code is ***51*** (Air Force NAF) & BUS Code is 0151 (Barksdale Air Force Base NAF)

OLMR is the abbreviation for the former Office of Labor-Management Relations, since renamed as OPM's Center for Partnership & Labor-Management Relations. Some labor relations specialists associate the OLMR number only with bargaining units and the LAIRS numbers with arbitration awards. However, we refer to the OPM's January 2001, publication, Union Recognition in the Federal Government, which addresses LAIRS in terms of the six digit number assigned to each recognition, and also as the computerized file of recognitions and agreements.

32. CARVEOUT

An attempt, usually unsuccessful under the **Federal Service Labor-Management Relations Statute** because it fosters unit fragmentation, to carve out (or sever)--usually along occupational lines (firefighters, nurses)--a subgroup of employees in an existing bargaining **unit** in order to establish a separate, more homogenous unit with a different union as **exclusive representative**.

33. CERTIFICATION

The determination by the Federal Labor Relations Authority (FLRA) of the results of an election or the recognition of the labor organization by the FLRA as the exclusive representative based on the mandatory procedure for determining such a representative.

34. CERTIFICATION BAR

One-year period after a union is certified as the **exclusive representative** for a unit during which petitions by rival unions or employees seeking to replace or

remove the incumbent union will be considered untimely (during this period, a union cannot be challenged by another labor organization). This bar protects a union from challenge in the absence of a negotiated agreement.. The bar is designed to give the certified union an opportunity to negotiate a substantive agreement, after which the contract can become a bar, except during the contract's 105-60 day **open period**, to a representation petition. [For related terms, see **Contract Bar** and **Election Bar.]**

35. CHALLENGED BALLOTS

Ballots that are challenged by election observers on the ground that the person casting the ballot isn't eligible to vote because, e.g., he or she is a **management official**, **supervisor**, **confidential employee** or engaged in **personnel work**. Challenged ballots usually are kept separate and if, after tallying the uncontested ballots, it is determined that there are enough challenged ballots to affect the outcome of the election, the Authority's agents will rule on each challenged ballot to see whether it should be counted.

36. CHECKOFF. See **DUES ALLOTMENT.**

37. CHIEF STEWARD

A union official who assists and guides shop stewards. The roles he or she plays within the union are determined by the union. The roles he or she plays in administering the contract are determined by the contract. For example, the **negotiated grievance procedure** may provide that the chief steward becomes the union representative if the grievance reaches a certain step in the grievance procedure.

38. CIVILIAN PERSONNEL MANAGEMENT SERVICE (CPMS)

A Defense Field Activity which supports the Under Secretary of Defense for Personnel and Readiness in the management and administration of the DoD civilian work force. CPMS is divided into several divisions which provide advisory services and operate DoD level programs for the civilian personnel community.

39. CIVIL SERVICE REFORM ACT OF 1978 (CSRA)

Public Law 95-454 passed by the 95th Congress on October 13, 1978, which became effective on January 11, 1979. Title VII of the Act concerns Federal Service Labor-Management Relations and supersedes Executive Order 11491 as amended. This provided Federal employees a legal, statutory basis for their right to organize, bargain collectively, and participate through labor unions in decisions which affect their working conditions. Title VII is codified at 5 U.S.C. Chapter 71.

40. CLARIFICATION OF UNIT PETITION

That portion of the FLRA's multipurpose petition *not* involving a **question concerning representation** that may be filed at any time in which the petitioner

(union or management) asks the FLRA to determine the bargaining unit status of various employees--i.e., to determine whether they are management officials, supervisors, employees engaged in nonclerical personnel work, or confidential employees, and therefore excluded from the unit (and from the coverage of the collective bargaining agreement applicable to the unit and its negotiated grievance procedure).

41. CLASSIFICATION ACT EMPLOYEES

Federal employees--typically professional, administrative, technical, and clerical employees (i.e., "white collar" employees)--sometimes referred to a "General Schedule" employees, to distinguish them from Federal Wage System (blue collar, Wage Grade) employees.

42. COLLECTIVE BARGAINING OR NEGOTIATIONS

The performance of the mutual obligation of the employer and the exclusive representative to meet at reasonable times, to consult and bargain in good faith, and upon request by either party to execute a written agreement with respect to terms and conditions of employment. This obligation does not compel either party to agree to proposals or make concessions.

43. COLLECTIVE BARGAINING AGREEMENT

A written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement. [Also known as **Agreement, CBA, Contract or Negotiated Agreement.]**

44. COMPELLING NEED

The only basis upon which regulations issued by an agency (i.e. Department of Defense) or a primary national subdivision of an agency (i.e. Air Force, Army, Navy) may serve as a bar to negotiations with a labor organization. Compelling need exists when the rule or regulation (a) is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the agency or primary national subdivision in a manner which is consistent with the requirement of an effective and efficient government; (b) is necessary to ensure the maintenance of the basic merit principles; and/or (c) implements a mandate to the agency or primary national subdivision under law or outside authority, which implementation is essentially nondiscretionary in nature. A labor organization may challenge the agency's interpretation of compelling need before the Federal Labor Relations Authority.

45. CONCILIATION. See **MEDIATION**.

46. CONFIDENTIAL EMPLOYEE

An employee who acts in a confidential capacity with respect to an individual who formulates or administers management policies in the field of labor-management relations.
Confidential employees must be excluded from bargaining units.

47. CONDITIONS OF EMPLOYMENT (COE)

Under title 5, United States Code, section 7103(a)(14), conditions of employment "means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise [e.g., by custom or practice], 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 positions; or (C) to the extent such matters are *specifically provided for by Federal statute*[.]" (Emphasis added.)

48. CONSULTATION. To be distinguished from **negotiation**

The FSLMRS provides for two types of consultation: between qualifying unions and agencies concerning agency-wide regulations and qualifying unions and those agencies issuing Governmentwide regulations .

49. CONTRACT BAR

A denial of a request for a representation election because of an existing negotiated agreement. A representation election will not be authorized by the FLRA if a written agreement already exists and is binding upon the parties. Note, however, that the contract bar does not prevent a union from filing a request for election during the appropriate open period, that is, the period between 105 and 60 days prior to the expiration of a contract. [For related terms, see **Certification Bar and Election Bar.]**

50. CONTRACTING OUT

A right reserved to management that includes the right to determine what criteria management will use to determine whether or not to contract out agency work.

51. "COVERED BY" DOCTRINE

A doctrine under which an agency does not have to engage in **midterm bargaining** on particular matters because those matters are already "covered by" the existing agreement.

52. DECERTIFICATION

Federal Labor Relations Authority's withdrawal of a labor organization's recognition as an exclusive representative because the union no longer qualifies

for such recognition, usually because it has lost a representation election. Request for decertification can be initiated by an agency or the employees in the bargaining unit.

53. DECERTIFICATION PETITION

A petition filed by employees in an existing unit (or an individual acting on their behalf) asking that an election be held to give unit employees an opportunity to end the incumbent union's exclusive recognition. Such a petition must be accompanied by a 30 per cent showing of interest and be timely filed (i.e., not barred by election, certification or contract bars).

54. DIRECT EMPLOYEES

The Authority has defined this right to include discretion "to supervise and guide [employees] . . . in the performance of their duties on the job." The right to direct, *by itself*, rarely is used as the basis for finding a proposal nonnegotiable. However, when combined with the right to assign work, it is the basis for finding proposals establishing performance standards nonnegotiable.

55. DISCIPLINE

A right reserved to management that the FLRA has said includes the right "to investigate to determine whether discipline is justified. " It also "encompasses the use of the evidence obtained during the investigation."

56. DoD 1400.25-M, SUBCHAPTER 711, LABOR MANAGEMENT RELATIONS

The portion of the Department of Defense Civilian Personnel Management Manual which implements policies, prescribes procedures, delegates authority, and assigns responsibility for the Federal labor-management relations program within the Department of Defense.

57. DoD 1400.25-M, SUBCHAPTER 771, ADMINISTRATIVE GRIEVANCE SYSTEM

The portion of the Department of Defense Civilian Personnel Management Manual which establishes the Department of Defense Administrative Grievance System (AGS). It covers all current appropriated fund non-bargaining unit DoD employees and all appropriated fund bargaining unit employees when a matter covered by the AGS cannot be grieved under a negotiated grievance procedure. It does not cover reinstatement and transfer eligibles who have applied for a position under a merit promotion program, non-citizens recruited overseas and appointed to overseas positions, or non-appropriated fund (NAF) employees.

58. DoD 1401.1-M, PERSONNEL POLICY FOR NONAPPROPRIATED FUND

INSTRUMENTALITIES

Manual which implements the personnel policies of the Department of Defense with respect to Non-appropriated Fund Instrumentality (NAFI) employees. It applies to DoD civilian and off-duty military employees of NAFIs worldwide, whose compensation is derived from non-appropriated funds with certain exceptions.

59. DUES ALLOTMENT (DUES WITHHOLDING, DUES CHECK-OFF)

Dues withholding services provided by the agency to unions that win exclusive recognition or dues withholding recognition. If the former, the services must be provided without charge to the union. Employee dues assignments must be voluntary (no union or agency shop arrangements permitted under the **Federal Service Labor-Management Relations Statute**) and may not be revoked except at yearly intervals, but must be terminated when the agreement ceases to be applicable to the employee or when the employee is expelled from membership in the union. [See 5 U.S.C. 7115.]

60. DUES WITHHOLDING RECOGNITION

A very limited form of recognition, under which a union that can show that it has 10 per cent of employees in an appropriate unit as members can qualify for the right only to negotiate a dues deduction arrangement. Such recognition becomes null and void as soon as a union is certified as the **exclusive representative** of the unit.

61. DUTY OF FAIR REPRESENTATION

“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.”

62. DUTY TO BARGAIN

Broadly conceived, it refers to both (1) the *circumstances* under which there is a duty to give notice and, upon request, engage in bargaining (see **MIDTERM BARGAINING**) and (2) the *negotiability* of specific proposals. Disputes over the former usually are processed through the Authority’s **unfair labor practice procedure** and frequently involve make-whole and *status quo ante* remedies. Disputes over the latter usually are processed through the Authority’s no-fault **negotiability** procedure in which the Authority determines whether or not there is a duty to bargain on the proposal at issue.

63. DURATION CLAUSE

A clause in a collective bargaining agreement which specifies the time period in which the agreement is in effect. Duration clauses are normally three years in length. Duration clauses may provide for automatic termination on a certain date, or automatic renewal for a specific period of time. Where an agreement has a term greater than three years, the agreement serves as a contract bar only during the first three years.

64. ELECTION AGREEMENT

Agreement entered into by the agency and the union(s) competing for exclusive recognition dealing with campaign procedures, election observers, date and hours of election, challenge ballot procedures, mail balloting (if used), position on the ballot, payroll period for voter eligibility, and the like. Such an agreement is subject to approval by the appropriate FLRA Regional Director.

65. ELECTION BAR

A 1-year period following a representation election in which there can be no other elections to challenge an exclusive representative's status. Even if the election fails to result in the selection of an exclusive representative, the 1-year bar stands and there can be no other election held in the same unit. This bar allows a period of stability for the parties involved (employees, management, and the labor organization). During this period, the FLRA will not consider any representation petitions for that unit or any subdivisions thereof. [For related terms, see **Certification Bar and Contract Bar.]**

66. EMPLOYEE

The term "employee" includes an individual "employed in an agency" or "whose employment in an agency has ceased because of any unfair labor practice," but does not include supervisors and management officials or anyone who participates in a strike or members of the uniformed services or employees in the Foreign Service or aliens occupying positions outside the United States.

67. EQUIVALENT STATUS

Status given a union challenging the incumbent union that entitles it to roughly equivalent access during the period preceding an election to facilities and services (bulletin boards, internal mail services, etc.) as that enjoyed by the incumbent union.

68. EXCEPTION TO ARBITRATION AWARD

Under 5 U.S.C. 7122, either party to arbitration may file with the Federal Labor Relations Authority an exception (appeal) to an arbitrator's award because the award is 1) 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 (e.g., award does not draw its essence from the agreement; resolving issues not

submitted to arbitration; granting remedy that exceeds claimed violation). The Authority will not consider an exception with respect to an award relating to actions taken in accordance with 5 U.S.C. 4303 and 5 U.S.C. 7512. See also 5 CFR Part 2425.

69. EXCESSIVE INTERFERENCE

A balancing test that the FLRA applies to proposals that are arrangements for employees adversely affected by the exercise of management's rights in order to determine whether they are negotiable **appropriate arrangements**. The test involves balancing the extent to which the proposal ameliorates anticipated adverse effects against the extent to which it places restrictions on the exercise of management's rights. [See 21 FLRA 24]

70. EXCLUSIVE RECOGNITION

Under the **Federal Service Labor-Management Relations Statute**, exclusive recognition is certified by the Federal Labor Relations Authority (FLRA) and is normally obtained by a union as a result of receiving a majority of votes cast in a representational election. The rights a union is accorded as a result of being certified as the **exclusive representative** of the employees in a bargaining unit include, among other things, the right to *negotiate* bargainable aspects of the conditions of employment of bargaining unit employees, to be afforded an opportunity to be present at *formal discussions*, to free *checkoff* arrangements and, at the request of the employee, to be present at *Weingarten* examinations.

71. EXCLUSIVE REPRESENTATIVE

The union that is certified as the exclusive representative of a unit of employees either by virtue of having won a representation election or because it had been recognized as the exclusive representative before passage of the CSRA. See **EXCLUSIVE RECOGNITION**. A union holding exclusive recognition is sometimes referred to as the exclusive bargaining agent of the unit.

72. EXTERNAL LIMITATIONS ON THE EXERCISE OF MANAGEMENT'S RIGHTS

Discretion reserved to management isn't unfettered. Quite apart from any limitations that may be found in the collective bargaining agreement (such as an **appropriate arrangement** provision), its discretion must also be exercised in accordance with the laws and regulations that set limitations on management discretion. Only those external limitations on the exercise of certain rights can be enforced by the union under the **negotiated grievance procedure**. See **APPLICABLE LAWS**.

73. FAIR REPRESENTATION, DUTY OF

The union's duty to represent the interests of all unit employees without regard to union membership.

74. FEDERAL LABOR RELATIONS AUTHORITY (FLRA, AUTHORITY)

The independent agency responsible for administering the **Federal Service Labor-Management Relations Statute** (FSLMRS). As such, it decides, among other things, representation issues (e.g., the bargaining **unit** status of certain employees), **unfair labor practice**s (violations of any of the provisions of the FSLMRS), **negotiability disputes** (i.e., **scope of bargaining** issues), **exceptions to arbitration awards**, as well as resolve disputes over consultation rights regarding agency-wide and government-wide regulations. The FLRA maintains 9 regional offices.

For more information on the FLRA, see its webpage at http://www.flra.gov/

75. FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

An independent agency that provides mediators to assist the parties in negotiations or in a labor dispute in reaching a settlement. FMCS provides lists of suitable arbitrators which are referred to the parties upon request and engages in various types of "preventive mediation." Although the bulk of its work is in the private sector, it also provides its services to the Federal sector. See **MEDIATION**.

For more information on the FMCS, see http://www.flra.gov/

76. FEDERAL SERVICE IMPASSES PANEL (FSIP or Panel)

An entity within the FLRA that resolves bargaining impasses, chiefly by ordering the parties to adopt certain contractual provisions relating to the conditions of employment of unit employees. The Panel uses many procedures for resolving impasses, including fact-finding, med-arb, final-offer interest arbitration, either by the Panel, individual members of the Panel, the Panel's staff, or by ordering the parties to refer their impasse to an agreed-upon private arbitrator who is to provide services. The Panel is empowered to "take whatever action is necessary and not inconsistent with [the Federal Service Labor-Management Relations Statute] to resolve the impasse." It is considered the legal alternative to strikes and lockouts as a means to resolving impasses in the Federal sector.

For more information on FSIP, see www.flra.gov/20.html

77. FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (FSLMRS)

Title 5, United States Code, sections 7101-7135. The statute can be downloaded from http://www.law.cornell.edu/uscode/5/ch71.html

78. FIELD ADVISORY SERVICES (FAS)

A division within the Civilian Personnel Management Service that is responsible for providing guidance and assistance to operating personnel offices throughout the Department of Defense. FAS is divided into four teams: 1) Benefits and Entitlements, 2) Classification, 3) Labor Relations and 4) Pay and Hours of Work.

79. FIELD ADVISORY SERVICES LABOR AND EMPLOYEE RELATIONS BRANCH

The FAS Labor and Employee Relations Branch provides technical advisory service to operational civilian personnel offices on clarification of laws, government-wide regulations, case law, and DoD policy on labor and employee relations matters. The Labor and Employee Relations Branch also assists in labor relations training initiatives and the administration of the Defense Partnership Council. The branch reviews and approves/disapproves labor agreements, provides advice and guidance to management negotiators, and provides advice in the preparation of positions before the FLRA, FSIP and other third party forums.

80. FINAL-OFFER INTEREST ARBITRATION

A technique for resolving bargaining impasses in which the arbitrator is forced to choose among the final positions of the parties--rather than order adoption of some intermediate position (i.e., “split the difference”). It can apply to individual items or “packages” of items. The theory is that each party, expecting that the interest arbitrator will pick the most reasonable of the two final offers, will have an incentive to move closer to the position of the other party in order to increase the odds that the arbitrator will select its final offer as the more reasonable of the two. This in turn narrows the gap between the parties. If the gap is narrow enough, it can be bridged by the parties themselves (by, e.g., splitting the difference).

81. FORMAL DISCUSSION

Under 5 U.S.C. 7114(a)(2)(A), a discussion between an agency representative(s) and a bargaining unit employee(s) concerning any grievance or any personnel policy or practice or other condition of employment which affects bargaining unit employees. The exclusive representative must be given the opportunity to be represented at these meetings

82. FREE SPEECH

Under 5 U.S.C. 7116(e), the expression of personal views or opinions, even if critical of the union, is not an **unfair labor practice** if such expression is not made in the context of a representational election and if it "contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions." During the conduct of an election, however, management officials must be neutral. This limited right of free speech applies to agency representatives.

83. GENERAL COUNSEL (FLRA)

An individual appointed by the President to the FLRA. The General Counsel is responsible for investigating Unfair Labor Practice (ULP) allegations, filing and prosecuting ULP complaints and exercising other powers prescribed by the FLRA. He/she also supervises the Authority's Regional Directors who, in turn, have been delegated authority by the FLRA to process representation petitioners.

84. GOOD FAITH BARGAINING

The statutory duty imposed on an agency and an exclusive representative which include the obligation to discuss and negotiate on any condition of employment, and approach negotiations with a sincere resolve to reach a collective bargaining agreement; to be represented by properly authorized representatives who are prepared to discuss and negotiate; to meet at reasonable times and convenient places as frequently as necessary; to avoid unnecessary delays in negotiations; and in the case of the agency, to furnish upon request data necessary to negotiation and to the extent required or permitted by law.

85. GOVERNMENT-WIDE REGULATIONS

Regulations issued by an agency bearing on conditions of employment that must be complied with by other agencies. Such regulations are a major limitation on agency discretion and therefore on the **scope of bargaining**, which presupposes agency discretion. Agencies chiefly involved in issuing such regulations are the **Office of Personnel Management** (on personnel management) and the General Services Administration (on property management). See, also, **CONSULTATION.**

86. GRIEVANCE

Under 5 U.S.C. 7103(a)(9), a grievance "means any complaint -(A) by an 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 an 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[.]" Whether a complaint is formally recognized and handled as a grievance depends on whether the subject of the complaint is covered under the grievance procedure.

87. GRIEVANCE ARBITRATION (RIGHTS ARBITRATION)

A third party procedure which may interpret language in a negotiated agreement, or otherwise resolve grievances under the contract. This form of arbitration determines what the rights of the parties are with respect to the negotiated agreement, laws, rules or regulations.

88. GRIEVANCE PROCEDURE

A systematic procedure, devised by the parties to the agreement, by which a grievance moves from one level of authority to the next higher level until it is settled, withdrawn, or referred to arbitration. Under title 5, United States Code, section 7121, a collective bargaining agreement must contain a grievance procedure terminating in final and binding arbitration. Apart from matters that must by statute be excluded (such as grievances relating to retirement, health and life insurance and the classification of positions), the scope of the grievance procedure is to be negotiated by deciding what matters are to be excluded from an otherwise "full scope" procedure--i.e., a procedure that covers all the matters mentioned in the statutory definition of "grievance." See **NEGOTIATED GRIEVANCE PROCEDURE**.

89. HIRE EMPLOYEES

A right reserved to management. The Authority has said that "the probationary period, including summary termination, constitutes an essential element of an agency's right to hire under [title 5, United States Code,] section 7106(a)(2)(A)."

See **SELECT** for a discussion of the much more frequently utilized right of management, in filling positions, to make selections for appointments from any appropriate source. The relationship between the right to hire and the right to select is still unclear.

90. IMPACT AND IMPLEMENTATION (I & I) BARGAINING

A statutory right of the union under 5 U.S.C. 7106(b)(2) to negotiate on the procedures use to implement management decisions made under 5 U.S.C. 7106(a). Even where the decision to change conditions of employment of unit employees is protected by management's rights, there is a duty to notify the union and, upon request, bargain on **procedures** that management will follow in implementing its protected decision as well as on **appropriate arrangements** for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining, which is the commonest variety of **midterm bargaining**.

91. INFORMATION

The union, to the extent not prohibited by law (e.g., the Privacy Act), is entitled, under certain circumstances (see **PARTICULARIZED NEED**, below), to data "for full and proper discussion, understanding, and negotiation of subjects within the **scope of bargaining**[.]" The agency must provide that information free of charge.

92. IMPASSE (DEADLOCK, STALEMATE)

A situation in which the parties are unable to reach a settlement or agreement.

93. INTEREST

In **interest-based negotiations (IBN)**, the concerns, needs, or desires behind an issue: *why* the issue is being raised.

94. INTEREST ARBITRATION

The arbitrator, instead of interpreting and applying the terms of an agreement to decide a grievance, determines what provisions the parties are to have in their collective bargaining agreement. This occurs when an arbitrator resolves disputes concerning contract negotiations. It is used sparingly since it is frequently considered an undesirable substitute for negotiations. The FSIP normally performs the interest arbitration function. Also see **ARBITRATION**.

95. INTEREST-BASED NEGOTIATIONS (IBN)

A bargaining technique in which the parties start with (or at least focus on) interests rather than proposals; agree on criteria of acceptability that will be used to evaluate alternatives; generate several alternatives that are consistent with their interests, and apply the agreed-upon acceptability criteria to the alternatives so generated in order to arrive at mutually acceptable contract provisions. The success of the technique depends, in large measure, on mutual trust and a willingness to share information. But even where this is lacking, the technique, with its focus on interests and on developing alternatives, tends to make the parties more flexible and open to alternative solutions and thus increases the likelihood of agreement.

96. INTERNAL SECURITY PRACTICES

A right reserved to management by title 5, United States Code, section 7106(a)(1). The right to determine the internal security practices of an agency isn't limited to establishing "those policies and actions which are part of the Agency's plan to secure or safeguard its physical property against internal and external risks, to prevent improper or unauthorized disclosure of information, or to prevent the disruption of the Agency's activities." It also extends to safeguarding the agency's personnel.

97. INTERVENTION/INTERVENOR

The action taken by a competing labor organization (intervenor) to place itself as a contender on the ballot for a recognition election originally initiated by another union (petitioner). Non-incumbent intervenors need only produce a 10 per cent showing of interest to be included on the ballot.

98. INVESTIGATORY EXAMINATION

An examination conducted by an agency representative in which an employee is questioned as part of an inquiry to get facts. [See **Weingarten Right**.]

99. JUDICIAL REVIEW

The review by the U.S. Court of Appeals instituted by any person aggrieved by certain final orders issued by the FLRA. However, judicial review may not be invoked regarding most arbitration decisions reviewed by the Authority or regarding appropriate unit determinations.

100. LABOR ORGANIZATION (UNION)

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. [See **Bargaining Unit.**]

101. LAIRS NUMBER -- Refer to **BUS CODE**.

102. LAYOFF EMPLOYEES

Right reserved to management by title 5, United States Code, section 7106(a)(2)(A).

103. MANAGEMENT OFFICIAL

An individual who formulates, determines, or influences the policies of the agency. Such individuals are excluded from **appropriate units**.

104. MANAGEMENT RIGHTS

Refers to types of discretion reserved to management officials by statute. **[See 5 U.S.C. 7106]**

- **Core rights**. Consists of the rights "to determine the mission, budget, organization, number of employees, and internal security practices of the agency[.]"

- **Operational rights**. Consists of the rights 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; to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; with respect to filling positions, to make selections for appointments from-- among properly ranked and certified candidates for promotion; or any other appropriate source; and to take whatever actions may be necessary to carry out the agency mission during emergencies.

- **Three exceptions**. The three title 5, United States Code, section 7106(b) exceptions to the above involve (1) **title 5, United States Code, section**

7106(b)(1) permissive subjects of bargaining (e.g., staffing patterns, technology) on which, under the statute, agencies can elect to bargain, (2) **procedures** management will follow in exercising its reserved rights, and (C) **appropriate arrangements** for employees adversely affected by the exercise of management rights.

1. **"Permissive" subjects exception**. This exemption to management's rights; i.e., the "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty" [staffing patterns] and with "the technology, methods, and means of performing work." Under the statute, such matters are, moreover, negotiable "at the election of the agency" even if the proposal also directly interferes with the exercise of a title 5, United States Code, section 7106(a) right.

2. **Procedural "exception."** Title 5, United States Code, section 7106(b)(2), dealing with procedures, really isn't an exception to management's rights as the Authority has held that a proposed "procedure" that "directly interferes" with a management right is not a procedure within the meaning of title 5, United States Code, section 7106(b)(2).

3. **Appropriate arrangement exception**. Title 5, United States Code, section 7106(b)(3) applies only if the proposal is intended to ameliorate the adverse effects of the exercise of a management right. Where such is the intent of the proposal, the Authority applies a balancing test in which it weighs the extent to which the proposal ameliorates the expected adverse effects against the extent to which it interferes with the management right and determines whether or not the specific proposal "excessively" interferes with management rights. If the interference is "excessive," the proposal isn't an "appropriate arrangement" and therefore is nonnegotiable. If otherwise, the proposal is a negotiable appropriate arrangement, even though it interferes with management's rights.

   To qualify as an "arrangement" to which it would be proper to apply the excessive interference balancing test, the proposal has to be "tailored" so that it applies only to those employees who would be adversely affected by the proposed management decision.

105. MEDIATION

A procedure by which an impartial third party (mediator) is used to settle disputes. The mediator assists in resolving the dispute by attempting to find a solution satisfactory to both parties in a dispute, but cannot render any binding decisions. A mediator is usually a neutral without authority to impose a settlement, who attempts to assist the parties in reaching an agreement. Mediation techniques vary, but one common practice is for the labor mediator to separate the parties (in order to control communications) and meet with them separately and, in effect, engage in interest-based bargaining with them.

Because the mediator usually is a neutral who cannot impose a settlement and because he or she is expected to keep confidences, each party is more willing to be open with the mediator than with the other party (or with an interest arbitrator). Because of this greater openness, the mediator often is able to see areas of possible agreement that the parties are unable to see in direct, unmediated, negotiations. Mediation is required before a negotiated impasse can be referred to the FSIP.

106. MEDIATION-ARBITRATION (MED-ARB) (mediation followed by interest arbitration).

A process in which a neutral with authority to impose (or to recommend the imposition of) a settlement, first resorts to mediation techniques in an attempt to get the parties to voluntarily agree on unsettled matters, but who can later impose a settlement if mediation fails. The theory behind it is that the parties will be more receptive to the med-arb's suggestions for settlement if they know that the med-arb has authority to impose a settlement.

107. MIDTERM BARGAINING

The right, under certain circumstances, to initiate bargaining during the term of a collective bargaining agreement. Usually contrasted with term bargaining: i.e., with the renegotiation of an expired (or expiring) contract. Midterm bargaining includes **I&I bargaining**, **union-initiated midterm bargaining on new matters**; and bargaining pursuant to a **re-opener** clause. It excludes matters that are already "**covered by**" the term agreement.

108. MISSION OF THE AGENCY

A right reserved to management by title 5, United States Code, section 7106(a)(1). Although illustrative case law on this particular right is meager, it is generally recognized that the right encompasses the determination of the products and services of an agency.

109. NATIONAL UNION

Ordinarily, a union composed of a number of affiliated local unions. The Bureau of Labor Statistics in its union directory, defines a national union as one with agreements with different employers in more than one state, or an affiliate of the AFL-CIO, or a national organization of employees.

110. NATIONAL CONSULTATION RIGHTS (NCR)

In the Federal government, a union which has exclusive recognition on an agency-wide basis or is the exclusive representative of a substantial number of agency employees is granted consultation rights. To fulfill these rights, the agency must inform the union of substantive changes in conditions of employment, give the union time to present its views and recommendations, consider those views and recommendations, and give the union written reasons for the final action. A union accorded NCR is entitled to be consulted on *agency-*

wide regulations before they are promulgated. NCR is to be distinguished from consultation rights with respect to *Government-wide* regulations, under which a union accorded such recognition must be consulted on proposed Government-wide regulations before they are promulgated.

111. NEGOTIABILITY

Refers to whether a given topic is subject to bargaining between an agency and the union. The Federal Labor Relations Authority makes the final decision whether a subject is negotiable or nonnegotiable.

112. NEGOTIABILITY APPEAL (PETITION FOR REVIEW)

If an agency believes that a union proposal is contrary to law or applicable regulation, or is otherwise nonnegotiable under the statute, it may inform the union of its refusal to negotiate. 5 U.S.C. 7117 provides a right to appeal the agency's determination of non-negotiability to the FLRA.

113. NEGOTIATED GRIEVANCE PROCEDURE (NGP)

A systematic procedure agreed to by the negotiating parties for the resolution of grievances. The negotiated grievance procedure is applicable only to employees in the bargaining unit. The scope of the negotiated grievance procedure is negotiated by the parties and may include certain matters for which a statutory appeal procedure exists, unless the parties negotiate their exclusion. Several matters **cannot** be included under its scope: 1) actions taken for violations of the Hatch Act; 2) retirement, life insurance or health insurance; 3) a suspension or removal taken in the interest of national security; 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. 5 U.S.C. 7121 requires the inclusion of a negotiated grievance procedure in all agreements and requires binding arbitration as the final step of the negotiated grievance procedure.

114. NUMBER OF EMPLOYEES OF AN AGENCY

A right reserved to management by title 5, United States Code, section 7106(a)(1). There have been no FLRA decisions in which a proposal has been found nonnegotiable because it interfered with this right.

115. OBJECTIONS TO ELECTION

Charges filed with the FLRA contesting election results because of alleged irregularities in the conduct of a representational election. If the objections are sustained, the FLRA could set aside the election results and order that the election be rerun.

116. OFFICE OF PERSONNEL MANAGEMENT (OPM)

Issues **government-wide regulations** on personnel matters that may have a substantial impact on the **scope of bargaining**; consults with labor organizations on those regulations; provides technical advice and assistance on labor-management relations matters to Federal agencies; also provides information on personnel matters to Federal agencies and the general public (e.g., this annotated glossary); exercises oversight with regard to statutory and regulatory requirements relating to personnel matters; and provides support services for the National Partnership Council.

117. OFFICIAL TIME

Duty time that is granted to employees acting on behalf of the exclusive representative to perform representational duties without loss of pay or charge to an employees leave account. Official time may not be granted for internal union business [See 5 U.S.C. 7131]. However, the Authority has said that section 7131(d) does not preclude parties to a collective bargaining agreement from agreeing to provide official time for other matters; that is, matters other than those relating to labor-management relations activities.

Union negotiators (no more than the number of management negotiators) who also are unit employees are statutorily entitled to official time to negotiate agreements. Official time may not, however, be used to perform internal union business. Title 5, United States Code, section 7131(d) allows the parties to negotiate the amount of official time that shall be granted to specified union representatives for the performance of specified representational functions.

118. OPEN PERIOD

The 45-day period (105 - 60 days prior to expiration of agreement) when the union holding exclusive recognition is subject to challenge by a rival union or by unit employees who no longer want to be represented by the union. The open period is an exception to the **contract bar** rule.

119. OPM Form 913B

The OPM Form 913B, OPM's Change Form on Recognitions and Agreements, is used to report changes in your labor union(s)'s status. Whenever the FLRA certifies new units, revises unit recognition, or abolishes one of your units, you should submit this form to your component headquarters. Your component headquarters will forward the form to OPM and a copy to FAS. You also update your unit(s)'s collective bargaining agreements (e.g. when they've been negotiated, renegotiated, amended, supplemented, etc.). This is provided directly to FAS. In addition, you identify the types of employees in your unit(s), e.g., professional, wage grade, and/or other GS.

120. OPPOSITION TO EXCEPTION TO ARBITRATION AWARD

If a party files an exception (appeal) to an arbitrator's award, the other party may oppose the exception to the Authority in accordance with 5 CFR 2425.1.

Oppositions to exceptions must be filed within thirty (30) days after the date of service of the exception.

121. ORGANIZATION

A right reserved to management. According to the FLRA, this right encompasses an agency's authority to determine its administrative and functional structure, including the relationship of personnel through lines of control and the distribution of responsibilities for delegated and assigned duties. That is, the right includes the authority to determine how the agency will structure itself to accomplish its mission and functions.

122. PACKAGE BARGAINING

A negotiating technique whereby contract proposals are grouped into a "package" usually offering substantial concessions by one party, in exchange for substantial gains. Frequently, the package proposal will be advanced with the condition that it must either be accepted as presented or rejected entirely.

123. PARTICULARIZED NEED

The Authority's analytical approach in dealing with union requests for information under title 5, United States Code, section 7114(b)(4). Under this approach, the union must establish a "particularized need" for the information and the agency must assert any countervailing interests. The Authority then balances the one against the other to determine whether a refusal to provide information is an **unfair labor practice**.

124. PARTNERSHIP

A form of employee participation established pursuant to Executive Order 12871 in which the parties are expected to deal with matters relating to improving *the performance of the agency* in a non-adversarial, non-litigious manner. The scope of partnership deliberations are broader than those of collective bargaining in that they usually include, e.g., deliberations over the conditions of employment of non-bargaining unit employees. Partnership deliberations also include deliberations over staffing patterns, technology, methods and means--matters integral to improving *agency* performance, which is the overriding purpose of the Order.

125. PAST PRACTICE (ESTABLISHED PRACTICE)

Existing practices sanctioned by use and acceptance which amount to terms and conditions of employment even though not specifically included in the collective bargaining agreement. In order to constitute a binding past practice, it must be established that (1) the practice must involve a condition of employment; and (2) the practice must be consistently exercised for an extended period of time and followed by both parties, or followed by one party and not challenged by the other over a substantially long duration. It should be noted that if a matter is not a

condition of employment, it does not become a condition of employment either through practice or agreement.

126. PERMISSIVE SUBJECTS OF BARGAINING

There are two types of proposals dealing with so-called "permissive subjects of bargaining": proposals dealing with (1) matters covered by title 5, United States Code, section 7106(b)(1)--i.e., with staffing patterns, technology, and methods and means of performing the agency's work, and (2) matters that are not conditions of employment of bargaining unit employees. Regarding the former, it should be noted that although an agency can "elect" not to bargain on a (b)(1) matter, the President has directed heads of agencies to instruct agency management to bargain on such matters in section 2(d) of Executive Order 12871. Regarding the latter, it should be kept in mind that, apart from the statutory exclusions from the definition of **condition of employment** found in title 5, United States Code, section 7103(a)(14), a matter may be found not be a condition of employment because (1) it deals with the conditions of employment *of non-unit employees* (e.g., a proposed procedure for filling supervisory vacancies) or (2) there is no direct connection between the matter dealt with by the proposal and the work situation or employment relationship of bargaining unit employees (e.g., a proposal authorizing unit employees to hunt on a military base when off duty). Regardless of type, once agreement is reached on a permissive subject of bargaining, that agreement cannot be disapproved by the agency head, and is enforceable under the negotiated grievance procedure.

127. PERSONNEL BY WHICH AGENCY OPERATIONS ARE CONDUCTED

A right reserved to management by title 5, United States Code, section 7106(a)(2)(B).

128. PICKETING

Demonstrating, usually near the place of employment, to publicize the existence of a labor-management dispute. This is commonly called **Informational Picketing** and is directed toward advising the public about the issue in dispute. This is specifically protected by 5 U.S.C. 7116(b) so long as the picketing does not interfere with agency operations. This is not to be confused with a "strike" as Federal employees are not permitted to strike under Federal law. Informational picketing may only be conducted outside an employee's established duty hours or the employee must be in an approved leave status.

129. PRIMARY NATIONAL SUBDIVISION

A first-level organizational segment (of an agency) which has functions national in scope that are implemented in field activities. For example, the military departments (Air Force, Army and Navy) are primary national subdivisions of the Department of Defense.

130. PROCEDURES

Under title 5, United States Code, section 7106(b)(2), the procedures observed by management in exercising its reserved rights are negotiable. To qualify as a negotiable (b)(2) procedure, the proposed "procedure" must not require the use of standards that, by themselves, directly interfere with management's reserved rights or otherwise have the effect of limiting management's reserved discretion.

131. QUESTION CONCERNING REPRESENTATION (QCR)

Refers to a petition in which a union seeks to be the **exclusive representative** of an **appropriate unit** of employees, or in which employees in an existing unit want to decertify the incumbent union. The filing of such a petition is said to raise a question concerning representation--i.e., whether, and by whom, unit employees are to be represented. Such petitions are distinguished from petitions seeking to clarify the composition of existing units (e.g., whether certain individuals are in or out of the unit) or to amend the names of the parties to the exclusive bargaining relationship.

132. RATIFICATION

Formal approval of a newly negotiated agreement by vote of the labor organization members affected.

133. REOPENING CLAUSE

A clause in a collective bargaining agreement stating the time or the circumstances under which negotiations can be requested prior to the expiration of the contract. Although some agreements provide for mutual consent re-openers, such re-openers are unnecessary as the parties can of course agree to reopen and renegotiate their agreement at any time, notwithstanding the contents of the agreement. The purpose of a re-opener is to enable one party to *compel* the other party to renegotiate the provisions covered by the re-opener. However, re-openings usually restrict the number of issues subject to negotiation during the term of an agreement.

134. REPRESENTATION ELECTION

Secret-ballot election to determine whether the employees in an appropriate unit shall have a union as their **EXCLUSIVE REPRESENTATIVE**.

135. REPRESENTATIONAL FUNCTIONS

Activities performed by union representatives on behalf of the employees for whom the union is the **exclusive representative** regarding their conditions of employment. It includes, among other things, negotiating and policing the terms of the agreement, attending partnership council meetings, being present at **formal discussions** and, upon employee request, ***Weingarten* examinations**.

136. REPRESENTATION ISSUES

Issues related to how a union gains or loses **exclusive recognition** for a bargaining unit, determining whether a proposed unit of employees is appropriate for the purposes of exclusive recognition, and determining the unit status of various employees.

137. REPUDIATION OF AGREEMENT

Framework developed by the FLRA to determine whether (1) the breach of the agreement was clear and patent and (2) the provision breached went to the heart of the agreement.

138. RETAIN EMPLOYEES

A right reserved to management. Although the rights to layoff and retain appear to be opposite sides of the same coin, the FLRA rarely mentions the right to retain when invoking the right to layoff to find nonnegotiable proposals dealing with RIFs and furloughs.

139. SCOPE OF BARGAINING

Matters about which the parties can negotiate. See **NEGOTIABILITY DISPUTES**.

140. SELECT (WITH RESPECT TO FILLING POSITIONS)

The statute reserves to management the right to make selections for appointments from any appropriate source. The right to select includes discretion to determine what knowledge, skills and abilities are necessary for successful performance in the position to be filled, as well as to determine which candidates possess these qualifications.

141. SENIORITY

Term used to designate an employee's status relative to other employees for determining order of overtime assignments, vacations, etc. Straight seniority is seniority acquired solely through length of service. Departmental or shop seniority considers status factors in a particular department or shop, rather than the entire agency. A seniority list is a ranking of individual workers in order of seniority.

142. SHOP STEWARD (STEWARD, UNION STEWARD, AREA STEWARD)

A local union's representative in an organization (department, shop, etc) designated to carry out union duties, represent employees in presenting grievances. collect dues and solicit new members. Stewards are usually fellow employees who are trained by the union to carry out these duties.

143. SHOWING OF INTEREST (SOI)

The required evidence of employee interest supporting a representation petition. The SOI is 30 per cent for a petition seeking exclusive recognition; 10 per cent to intervene in the election; and 10 per cent when petitioning for dues allotment recognition. Evidence of such a showing can consist of; e.g., signed and dated authorization cards or petitions.

144. STAFFING PATTERNS

A short-hand expression used to refer to title 5, United States Code, section 7106(b)(1)'s long-winded reference to "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty[.]" Under the statute, agencies can elect not to bargain on such matters. However, under Executive Order 12871, the President has directed agencies to bargain on such matters.

145. STANDARDS OF CONDUCT FOR LABOR ORGANIZATIONS

Standards regarding internal democratic practices, fiscal responsibility, and procedures to which a union must adhere to qualify for recognition. The Department of Labor has responsibility for making known and enforcing standards of conduct for unions in the Federal and private sectors.

146. STRIKE

A temporary stoppage of work by a group of employees in connection with a labor dispute. In the Federal sector, strikes are specifically prohibited by Federal law and constitute an unfair labor practice under Section 7116(b)(7) of the Federal Service Labor-Management Relations Statute. Slowdowns, sickouts and related tactics are also prohibited by the Statute.

147. SUCCESSORSHIP

Where, as the result of a reorganization, a portion of an existing unit is transferred to a gaining employer, the latter will be found to be the successor employer (thus inheriting, along with the employees, the **exclusive representative** of those employees and the collective bargaining agreement that applied to those employees) if: (a) the post-transfer unit is appropriate, (b) the transferred bargaining unit employees are a majority in the post-transfer unit, (c) the gaining employer has "substantially" the same mission as the losing employer, (d) the transferred employees perform "substantially" the same duties under "substantially" similar working conditions in the gaining entity, and (e) it is not demonstrated that an election is necessary to determine representation.

148. SUPERVISOR

Under 5 U.S.C. 7103(a)(10), a supervisor is "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[.]" The individual need exercise only one of the indicia of supervisory authority, not a majority of them, to qualify as a supervisor for the purposes of the statute, provided it involves the consistent exercise of independent judgment.

149. UNFAIR LABOR PRACTICE (ULP)

[See 5 U.S.C. 7116] A violation of any of the provisions of the Federal Service Labor-Management Relations Statute. It is a term of art that is narrower in scope than the misleading adjective "unfair" suggests. ULP *charges* are filed with the Authority by an individual, a union, or an employer. They are investigated by the General Counsel who issues a ULP *complaint* if the General Counsel concludes the charge(s) have merit, and who prosecutes the matter before an Administrative Law Judge in a fact-finding hearing and before the Authority, which decides the matter.

The most common agency ULPs are **duty-to-bargain** ULPs (usually a failure to give the union notice of proposed changes in conditions of employment and/or engage in impact and implementation bargaining), **formal discussion** ULPs, ***Weingarten*** ULPs, and failure-to-provide-**information** ULPs. The most common ULP committed by a union is a failure to fairly represent (see **fair representation**) all unit members without regard to union membership.

150. UNILATERAL ACTION

Implementation of management decisions concerning personnel policies and matters affecting working conditions without providing the union advance notice of such changes in working conditions and an opportunity to negotiate to the extent permitted by law.

151. UNION

A labor 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 . . . .”

152. UNION-INITIATED MIDTERM BARGAINING ON NEW MATTERS

Absent a bargaining waiver, the Federal Labor Relations Authority has ruled that the union has the right to initiate, during the life of the existing agreement, bargaining on matters not **“covered by”** the agreement. See 56 FLRA 45. This case was on remand from the Supreme Court in NFFE, Local 1309 vs. Department of Interior , 526 U.S. 86 (March 3, 1999). The Supreme Court did not determine whether a union has the right to initiate midterm bargaining or not.

The Court ruled that the Statute delegates to the Authority the legal power to determine whether parties must engage in midterm bargaining or bargaining about midterm bargaining.

153. UNIT. See **APPROPRIATE UNIT**.

154. UNIT CONSOLIDATION

A no-risk procedure for combining existing units into one or more larger appropriate units.

155. UNIT DETERMINATION ELECTION

When (a) several petitioners seek to represent different parts of an agency, (b) the proposed units overlap, and (c) the FLRA finds that more than one of the proposed units is appropriate, it lets the employees vote for units as well as unions.

156. VITALLY AFFECTS TEST

An agency may be obligated to bargain with a union over matters that directly affect individuals other than unit employees insofar as such matters involve or "vitally affect" the terms and conditions of employment of unit employees. The Authority has looked at proposals that directly implicated (1) non-employees; (2) employees in other bargaining units; and (3) supervisory personnel. The "vitally affects" test is not applicable for other bargaining unit employees or supervisory personnel, but is applicable for non-employees. See 51 FLRA 491.

157. WAIVER

An agreement reached between union and management whereby one party voluntarily gives up rights afforded to it. For waivers to be enforceable, they must be "clear and unmistakable." It should be noted that management cannot waive rights afforded to management under 5 U.S.C. 7106(a).

158. WEINGARTEN RIGHT

Under 5 U.S.C. 7114(a)(2)(B), this refers to the right of a bargaining unit employee to be represented by the union when (1) the employee is examined in an investigation (investigatory examination) conducted by an agency representative; (2) the employee reasonably believes disciplinary action against him or her may result; and (3) the employee requests union representation. Such examinations are called *Weingarten* examinations because Congress, in establishing this right, specifically referred to the private sector case establishing such a right. [See **Investigatory Examination.**]

159. WORKING CONDITIONS. See **CONDITIONS OF EMPLOYMENT**.

160. ZIPPER CLAUSE

An agreement provision specifically barring any attempt to reopen negotiations during the terms of the agreement. [For a related term, see **Reopening Clause.**]