Labor-Management Relations Guide for Line Supervisors

United States Department of Agriculture
Rural Development

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TO: Supervisors and Managers

FROM: Labor Relations Staff, USDA/Rural Development

SUBJECT: Supervisor's Guide to Labor-Management Relations

As a supervisor having direct daily contact with employees, you must both: (1) see that the employees under your direction perform their work properly; and (2) comply with the Federal Service Labor-Management Relations Statute. The decisions you make on a daily basis while carrying out the first of these responsibilities inevitably raise questions about how to carry out the second. For many supervisors, the most confusing and challenging part of the job is finding answers to the question: “How can I do both?”

As you answer the question “How can I do both?” you can use this text in two ways. First, you can use it as an introductory primer on labor relations. Second, you can keep it at hand as a ready reference for answers to your most general everyday questions. Once you grasp this basic material, you will more readily understand why your superiors or the Agency’s Labor Relations personnel advise you as they do. If you have already supervised employees for a while, you will also discover you ought to be more alert to labor relations issues—and discuss them more frequently with your supervisor—than you did in the past because you were practicing labor relations and didn’t even know it.

For guidance, assistance and encouragement, you should ask your own supervisor and Human Resource Manager. Do not rely on your barber or hairdresser, a relative, or neighbor. If you think something might raise issues related to labor relations, it probably does. Please do not be afraid to ask us for the answer.

A wise teacher once had the following exchange with a pupil:

> Teacher: “I believe you look on me as one whose aim is simply to learn and remember as many things as possible.”
>
> Pupil: “Yes. Is that not so?”
>
> Teacher: “No. Instead, I have one thing running through all.”

As you use this “Supervisor’s Guide”, look for the one thing running through and tying together the varied details—the “many things”—of Labor-Management Relations: American democracy for the government workplace.

Preamble—Workplace Democracy

Labor-management relations in the Federal Government are grounded in the same concepts of workplace democracy as have been practiced in the private sector since Congress gave workers there the legally protected right to engage in concerted and union activities by passing the National Labor Relations Act ("NLRA" or "Wagner Act") of 1935.

Beginning under an Executive Order issued by President Kennedy in the 1960s and continuing through the 1970s, federal sector employers recognized unions as representing their employees.

Finally, under President Carter, Congress created the legal framework for federal labor-management relations substantially as it exists today by enacting the Civil Service Reform Act of 1978 containing Chapter 71 of Title 5 commonly called the Federal Service Labor-Management Relations Statute ("FSL-MRS").

The first section of the FSL-MRS, entitled "Findings and Purpose", says (emphasis added):

> (a) The Congress finds that--
>
> (1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and **participate through labor organizations of their own choosing in decisions which affect them**--
>
> (A) safeguards the public interest,
>
> (B) contributes to the effective conduct of public business, and
>
> (C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving **conditions of employment**; and
>
> (2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.
>
> Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

This is American democracy for employees in the government workplace

- participatory self-government—"participate … in decisions which affect them"
- limited—"conditions of employment" (i.e., virtually any significant practice, policy or way of doing things related to employment; for the legal definition, see #15, "Conditions of Employment", below in section XVI, "Labor Relations Terms")
- representative—"through labor organizations"
    - ♦ labor organization is employees' only representative for collective bargaining
    - ♦ unit represented by only one labor organization
    - ♦ "through labor organizations" is only way employees participate
- democratic—"of their own choosing"
- democratic—union internal business conducted according to democratic procedures

This "Supervisor's Guide" introduces you to the **procedures** of workplace democracy (i.e., collective bargaining between exclusive representatives and employing agencies to resolve disputes about employees' conditions of employment) and the **protection** of workplace democracy (i.e., institutional and procedural mechanisms set up to prevent and remedy unfair labor practices)

Eight Points to Remember

- ***Obligation***: Neither an agency nor a union may discriminate against any employee because he or she does—or does not—engage in union activity (e.g., solicit others to join, vote, join, act as a representative, etc.)
- ***Obligation***: With respect to conditions of employment Management may not deal with bargaining unit employees (BUEs) individually, may not hold formal discussions with BUEs without giving the union an opportunity to be present, and may not introduce changes unilaterally.

- ***Obligation***: In the event of a union organizing campaign, Management must remain neutral.

- ***Obligation***: When an agency representative questions a BUE during an administrative investigation that could result in that BUE being disciplined, the BUE has the right, on request, to have a union representative present.

- ***Obligation***: An agency must permit union officials a reasonable amount of official time to perform their representational duties, e.g., negotiations and grievance meetings or preparing for them.

- ***Obligation***: BUEs must use the negotiated grievance procedure (NGP) in their collective bargaining agreement/s (CBAs) to resolve complaints coming within the scope of the NGP.

- ***Advice***: When in doubt about how to interpret or apply or comply with the FSL-MRS or CBA, consult with your supervisor, Human Resources Manager, or Administrative Officer.

- ***Advice***: Be certain you know the union-represented bargaining unit/s within your organization, whether the employees you supervise are in or out of a unit, the name of the local union official with whom you should deal, and the provisions of any applicable CBAs.

I. Employee Rights

- Form, join, or assist a labor organization.
- Act as a representative for labor organization.
    - ♦ Chief Steward or Shop Steward
    - ♦ Local President
    - ♦ Regional or National Representative
- As representative, present views of labor organization to Agency head, other Officials of Executive Branch, or Congress.
- Bargain collectively through labor organization with respect to conditions of employment.
- Not do any of the above.
- Exercise these rights without fear of penalty or reprisal by Agency or by Union.

5 USC § 7102

II. Representation of Employees

> §7111(a) "An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election."

A. Appropriate [Bargaining] unit

- a group of employees (identifiable by agency, plant, installation, function or other basis) who have a clear and identifiable community of interest with one another distinct from that of other such groups.

- Collective bargaining on the basis of this unit must promote effective dealings **with** the agency.

- Collective bargaining on the basis of this unit must promote efficient operations **of** the agency.

B. Exclusions

- Supervisors—a person [except for firefighters and nurses] who has the authority to take, or effectively recommend taking, any of the following actions with respect to at least *one* employee:

Hire	Transfer	Discipline
Direct	Furlough	Remove
Assign	Layoff	Adjust grievances
Promote	Recall	
Reward	Suspend	

  - ♦ … when the exercise of this authority is not merely routine or clerical but requires the consistent exercise of independent judgment

- Management officials

- Confidential employees, i.e., those acting in a confidential capacity with respect to individuals who formulate or effectuate policies on behalf of management in labor-management relations

- Employees engaged in: (1) personnel work in other than a purely clerical capacity; (2) investigators directly affecting an agency's internal security; (3) administering the provisions of Title 5, Chapter 71; and (4) work directly affecting national security.

C. Representation procedures

- A petition is filed at an office of the FLRA
    - ♦ To determine if employees wish to have a union as their exclusive representative
    - ♦ To determine if employees no longer wish to have a union as their exclusive representative
    - ♦ [Also, to determine the eligibility of a union for dues allotment without being an exclusive representative]
- A representation petition may be filed by an individual, a labor organization, two or more labor organizations filing jointly, an individual acting on behalf of other employees, an agency, or a combination of the above
- A representation petition must be supported by an appropriate "showing of interest"
    - ♦ Membership or authorization cards or petition signed by at least 30% of the employees in the unit
    - ♦ Incumbent union may use document indicating current recognition or certification, or recently expired labor agreement
- FLRA Regional Office either negotiates an agreement between the labor organization(s) and agency to hold an election in an appropriate unit, or the FLRA Regional Director holds a hearing to receive evidence and issues a decision directing an election in such a unit
- Period between date of petition and date of election is "critical period"
    - ♦ conduct by unions and agencies may interfere with the employees' free and unimpeded exercise of their right to choose whether or not to be represented
    - ♦ losing party may file "objections" alleging conduct by the other party interfered with a free election so the election should be run again
- FLRA Regional Office conducts a secret ballot election in which employees choose which of the labor organization(s) on the ballot they wish to have represent them for purposes of collective bargaining OR not to be represented by a labor organization
    - ♦ Voting eligibility of certain individuals may be challenged—ballots sealed in envelope to be opened and mixed with others before all are counted if parties

agree, or opened and counted after investigation by the FLRA Regional Office if necessary to determine the outcome of the vote

- ♦ Currently, most often by mail, but sometimes at workplace during business hours

- Majority rules

  - ♦ In an election with only one choice—between one union and no union—a tie is the same result as "no" because the union did not obtain the support of a majority

  - ♦ In an election with at least three choices, if none of the choices receives a majority of the valid votes cast, the FLRA conducts a runoff election between the two choices with the highest numbers of votes

- FLRA issues a "certification of results" if union did not obtain majority support or "certification of representative" if union did

5 USC § 7103 and § 7112

III. Union Rights and Responsibilities

A. Rights of a labor organization with exclusive recognition

- Exclusive representative of employees in bargaining unit and entitled to act for and negotiate collective bargaining agreements for all employees in the unit.

- Be given the opportunity to be represented at any “formal discussion”.

- Be given the opportunity to be represented at any meeting with unit employees in connection with an investigation if the employee reasonably believes the meeting could result in disciplinary action and the employee requests union representation. (“*Weingarten*” discussions)

- Be given the advance notice of any proposed changes to established conditions of employment and an opportunity to negotiate over these proposed changes absent any clear and unmistakable waiver of this right.

B. Responsibilities

- Represent interests of all bargaining unit members, without discrimination and without regard to union membership.

- Negotiate with management in a “good faith” effort to determine conditions of employment.

5 USC § 7114(a)(1)

IV. Official Time

A. Definition

- Duty time granted to union representatives to perform union representational functions, without charge to leave or loss of pay, when the employee would otherwise be in a duty status. Time is considered to be hours of work.

B. When is official time permitted? — (if you get a request for "official time", check with your supervisor)

- It **<u>may or must</u>** be permitted for representational functions such as:
    - ♦ Contract or mid-term negotiations
    - ♦ Representing employees who file grievances
    - ♦ Any proceeding before the Federal Labor Relations Authority (i.e., representation, unfair labor practice, impasse)
    - ♦ For any employee representing an exclusive representative or any employee represented by an exclusive representative in any amount the agency and the exclusive representative agree to be reasonable, necessary, and in the public interest
- It **<u>may not</u>** be permitted to conduct internal union business, such as:
    - ♦ Soliciting membership
    - ♦ Collecting union dues
    - ♦ Any matters relating to internal management and structure of union (e.g., elections of union officials)
- Overtime **<u>may not</u>** be permitted for official time because:
    - ♦ Representation primarily serves the union and is not for the primary benefit of the government as an employer
    - ♦ Time spent performing representational business outside an employee's normal workday is not considered time performing "work" within meaning of 5 U.S.C. §§ 5542 - 5544, the Fair Labor Standards Act, and 5 CFR 551.104 and 551.424

- Exception to overtime prohibition provides overtime on official time if the employee/representative is already on overtime duty status

5 USC § 7131

V. Union's Right to Obtain (Agency's Obligation to Furnish) Information

- To the extent not prohibited by law, Agency is obligated to furnish the exclusive representative, on request, data -
    - ♦ which is normally maintained by the agency in the regular course of business;
    - ♦ which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining; and
    - ♦ which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining....
- Unlike Freedom of Information Act (FOIA) requests, information must be provided free of charge
- If you receive a request for information from a union representative, contact your supervisor or Labor Relations Specialist immediately.

5 USC § 7114(b)(4)

VI. Formal Discussion

A. Union has a right to be present to represent employees when:

- There is a “discussion”
- The discussion is “formal”
- The participants include both
    - (a) one or more representatives of the Agency, and
    - (b) one or more employees in the unit, or their representatives
- The subject concerns any grievance or any personnel policy or practice or other general condition of employment

B. What is a “Discussion”?

- The term “discussion” in the Statute is synonymous with “meeting”
- no actual discussion or dialogue need occur for the meeting to constitute a “formal discussion” within the meaning of the Statute.

C. Whether a Discussion is “Formal” depends on all the circumstances

- Status of the individual who held the discussion (e.g., first-level supervisor = not “formal”; higher-up = “formal”);
- Whether any other management representative attended (“no” = not “formal”; “yes” = “formal”);
- Where the meeting took place (e.g., hallway or at employee’s work station = not “formal”; supervisor’s office = “formal”);
- How long the meeting lasted (short = not “formal”; long = “formal”);
- How the meetings were called (i.e., spontaneously and informally = not “formal”; formal advance written notice = “formal”);
- Whether a formal agenda was established for the meeting (no = not “formal”; yes = “formal”);

- How the meeting was arranged (e.g., employee's attendance is voluntary = not “formal”; or mandatory = “formal”);

- The manner in which the meetings were conducted (i.e., participants’ identities not noted and comments not transcribed = not “formal”; identities were noted and comments were transcribed = “formal”).

D. Union's Role.

- The opportunity to be represented at a formal discussion means more than merely the right to be present. The right to be represented also means the right of the union representative to comment, speak and make statements.

- On the other hand, this right does not entitle a union representative to take charge of, usurp, or disrupt the meeting.

- Comments by a union representative must be governed by a rule of reasonableness, which requires respect for orderly procedures.

E. Events That Are Not “Formal Discussions”

- Work assignments

- Progress reviews

- Performance appraisal

- Performance counseling

- Counseling on conduct

F. Discharging Obligation

- Give union reasonable advance notice of meeting (time, date, place, and subject to be discussed).

- Provide union opportunity to attend.

G. Questions and Answers

1. If an employee approaches me and asks a question about work rules or personnel practices, is this a “formal discussion” or “meeting”?

- Under normal circumstances it is not. Since the employee initiated the conversation in an informal setting, the supervisor is free to respond to the employee's question.

However, the meeting or discussion could be considered “formal” if, during the conversation, the supervisor establishes or changes general personnel practices or work rules. In addition, any discussion you have with an employee concerning a grievance he or she filed is a formal meeting.

2. Suppose I want to call an employee's attention to an existing work procedure—is that a formal meeting or discussion?

- Discussing work procedures, assignments, or performances is normally not a “formal discussion” or meeting under the law. For example, reminding an employee to wear safety equipment is not a formal meeting or discussion.

3. I have decided to hold a “formal discussion” or meeting. What happens next?

- Contact your Labor Relations Specialist to: (1) find out how to invite the union; and (2) find out the appropriate union official to invite. Then, set up the meeting long enough in advance that everyone has a reasonable opportunity to arrange to be present, and invite the union official.

4. If I plan to hold a formal discussion or meeting, must I mention the right-to-have-union-representation to the employee?

- No. In the case of a “formal discussion”, it is not employees who have a right to union representation, but the union which has the right to be present. Your obligation is to notify the union so it can decide whether or not to attend.

5. If the employee does not want a union representative at a formal discussion or meeting but the union demands to be present, do I allow the union representative to be there?

- Yes. Since a “formal discussion” touches on “conditions of employment” affecting unit employees generally, the representative of the bargaining unit as a whole—the union—must decide for itself whether to be present.

5 USC § 7114(a)(2)(A)

VII. Investigative Interviews—"*Weingarten*" Rights

A. Definition

- A union must be given the opportunity to have a representative present during an examination of a unit employee by an agency representative in connection with an investigation, if:
    - ♦ The employee reasonably believes the examination may result in his/her own discipline; and
    - ♦ The employee requests representation.

B. Management's Obligations

- In all cases where the employee requests union representation, pause until you have obtained guidance from your Labor Relations Specialist. The options include:
    - ♦ Stop discussion, and continue investigation by other means without interviewing that bargaining unit employee.
    - ♦ Temporarily delay meeting to allow union representative to attend.

C. Union's Role

- Ask relevant questions.
- Assist employee to answer.
- Cannot answer questions, break up meeting, or prevent Agency from carrying out investigation.

D. Questions and Answers

1. Must the interview or examination be related to an investigation that is formal?

No, an "investigation" occurs whenever a supervisor seeks information to determine whether discipline should be taken against an employee. For example, a supervisor wonders whether an employee was late for work, calls him/her into the supervisor's office and asks casually whether that was the case and, if so, why. That supervisor is "investigating".

2. When a union representative is present during an investigatory interview, to what extent must the supervisor permit the union representative to participate?

- The Supreme Court has said:
    - ♦ The union representative is present to assist the employee by clarifying facts or bringing out favorable information.
    - ♦ The employer may insist on hearing the employee's account of the incident.
    - ♦ The employer need not permit the union representative to confuse, supply information, delay, debate, argue or bargain.
    - ♦ The employer has no duty to bargain with the union representative.

3. Does this mean I can require the union rep. to be quiet during the interview?

- Absolutely not. Although you may insist that the employee, not the union representative, answer your questions, you must allow the union representative an opportunity to clarify questions and answers or bring out favorable information.

4. What do I do if the union representative becomes so argumentative as to completely disrupt the interview process?

- Warn the union representative that if he/she continues to disrupt the meeting, you will be forced to end the interview and make your disciplinary decision on the basis of other information (without the benefit of the employee's input).
- If the union representative persists in being disruptive, terminate the meeting and make your decision as best you can

5 USC § 7114(a)(2)(B)

VIII. Management Rights

A. Definition: types of discretion which, under 5 U.S.C. § 7106, management officials can neither waive nor agree in a CBA to give up because bargaining about them is prohibited

1. The exercise of "core" management rights—5 U.S.C. § 7106(a)(1)

- Determine the agency's mission, budget, organization, number of employees, and internal security practices;

    - ♦ Determining an agency's mission includes establishing policies or procedures central to its accomplishment, e.g., hours when offices are open to the public

    - ♦ Determining an agency's organization includes
        the geographical location of activities
        how responsibilities will be distributed among organizational components
        the location of specific positions

2. The *lawful* exercise of "operational" management rights—5 U.S.C. § 7106(a)(2)

- Hire, assign, direct, lay off, and retain employees;

    - ♦ Assigning employees includes deciding which employees will be assigned to a particular location

    - ♦ Directing employees includes
        deciding the quantity, quality and timeliness of work to be produced
        developing performance standards

- Suspend, remove, reduce in grade or pay, or discipline employees;

- Assign work, make determinations with respect to contracting out, and determine the personnel by which operations will be conducted;

    - ♦ Assigning work includes deciding
        the particular tasks to be performed
        when the work will be performed
        who will perform the work
        the classifications which will perform the work

- ♦ Making determinations with respect to contracting out includes deciding
  whether a function will be contracted out
  when a function will be contracted out

- ♦ Determining the personnel by which operations will be conducted includes deciding the particular employees to whom work will be assigned

- Select and appoint employees from appropriate sources; and

- Take whatever actions may be necessary to carry out the Agency mission during emergencies.

  - ♦ Taking action during emergencies includes deciding
    whether an emergency exists
    what actions are necessary to carry out the agency's mission during the emergency

B. <u>However</u>, even though an agency has no obligation to bargain about the substance of a decision with respect to any of the subjects listed above under "A", if the implementation of that decision changes conditions of employment, the agency is obligated to bargain to the extent of the change about...

- procedures for management to follow when implementing the decision—5 U.S.C. § 7106(b)(2)

- appropriate arrangements to soften the adverse impact on affected employees—5 U.S.C. § 7106(b)(3)

C. An agency is not legally obligated—but may decide for itself whether or not—to bargain about the "elective" or "permissive" subjects of bargaining listed in 5 U.S.C. § 7106(b)(1), i.e., ...

  - ♦ "the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty…"
    "number" is the amount of employees or positions assigned to a particular subdivision, work project or tour of duty.
    "type" is employees or positions assigned to perform work in a particular subdivision, work project or tour of duty.
    "grade" is related to types of employees. While the FLRA has not specifically defined "grades," it usually concerns employees or positions at already established grade levels that are assigned to perform work in a particular subdivision, work project or tour of duty.

However, union cannot negotiate on classification of positions or organizational structure.

"organizational subdivision" is an organizational part or segment.

"work project" is a particular job or task.

"tour of duty" is the hours-of-the-day and days-of-the-administrative-workweek an employee is regularly scheduled to work.

- "the technology, methods, and means of performing work…"

  "technology" is the technical method used in accomplishing or furthering the performance of the agency's work.

  "method" is the way in which an agency performs its work (how).

  "means" is any instrumentality including any agent, tool, device, measure, plan or policy used by the agency for accomplishing or furthering the performance of its work.

5 USC § 7106

IX. Changes In "Conditions of Employment"

A. Obligation to Bargain in Good Faith

- Both parties are obligated to bargain with one another "in good faith"
- This bargaining obligation extends to employees' "conditions of employment"
- Neither an agency nor a union may change employees' "conditions of employment" unilaterally, i.e., without satisfying their obligation to bargain "in good faith"
- Good faith bargaining has two possible outcomes:
    - ♦ agreement
    - ♦ impasse resolved by the Federal Services Impasse Panel

B. Management's Role

- Management is usually the party moving to make changes, esp. while a labor agreement is currently in effect
- Except in emergency conditions, management may change "conditions of employment" **only** after satisfying its obligation to bargain in good faith.
    - ♦ Management must give the union reasonable advance notice of the proposed change
    - ♦ "Reasonable advance notice" is long enough that the parties can arrange to meet, negotiate, agree to something different from management's tentative decision, and implement what they agree to
    - ♦ The labor agreement may specify how much advance notice is required.

C. Recognition of Obligation

- Would the decision produce a change, or will the decision continue an existing way of doing things?
- Would the decision result in changes affecting bargaining unit employees?

- Would the change affect conditions of employment?

- Would the change be significant?

    - ♦ Rule of thumb: the change is “significant” if an employee might care one way or the other
    - ♦ E.g.’s, obvious—wages, benefits, hours of work, work duties, safety, vacation scheduling, discipline, performance evaluations, official time
    - ♦ E.g.’s, not-so-obvious—color of paint on the walls, bottled or tap water for drinking, height of fountains, carpeting color/fabric/design, square footage per person, allocation of parking spaces, placement of telephone in office, etc.

NOTE: whenever you want to make a significant change, ask your supervisor to check with the Labor Relations Staff to determine whether making the change will trigger an obligation to bargain with the union

X. Contract Administration

A. Definition

- How the terms of the labor agreement will be interpreted, applied, and enforced.

B. Collective Bargaining Agreement

- Document stating enforceable contract obligations
- Between an employer and a labor organization representing employees of that employer ("the parties")
- Fixes for its duration the day-to-day "conditions of employment"
- Establishes a means for resolving disputes.

C. Contract Interpretation Principles

- Agreement states the mutual intent ("meeting of the minds") of the parties or their representatives.
    - ♦ Language of agreement
    - ♦ Bargaining history
        proposals made/withdrawn
        reasons given
        quid pro quo
        changes from one CBA to successor CBA
    - ♦ Past practice
        concerns condition of employment
        clear and consistent
        long standing
        accepted by both parties
        not contrary to law, regulation, CBA

D. The Union Steward

- The union steward is an employee serving as a representative of the union at a specific worksite. Stewards may be elected or appointed.

A steward's duties are of two kinds:

1. Representing the union and bargaining unit employees in dealing with management. These “representational” activities include handling grievances, policing the contract, informing employees of working condition changes, and meeting with management. Stewards will be granted a certain amount of official time, without charge to leave, for these representational activities. The amount of time granted depends on the CBA or, if the CBA does not say, must be determined by agreement between the Agency and union.

2. Conducting internal union business such as participating in elections of union officials, soliciting membership, collecting dues and attending union meetings. The use of official time for conducting internal union business is prohibited by FSL-MRS. Such activities can only be done on non-duty time.

For representational activities, management should recognize that fellow union members place the steward in a position of trust and should accord the steward the cooperation and respect necessary in order for the steward to do an effective job.

Since stewards are responsible for representing the union and all bargaining unit employees, it is important that they have enough time to carry out representational responsibilities and have access to bargaining unit employees. At the same time, the steward, as an employee, is responsible for performing the assigned duties of his or her position. The goal in specifying a steward's activities in the contract should be to balance the steward's responsibility for representing the union and bargaining unit employees with management's primary responsibility for mission accomplishment.

E. The Supervisor-Steward Relationship

- Supervisors and stewards play an extremely important role in determining whether the labor management relationship is a good or bad one. On a day-to-day basis, the supervisor has primary responsibility for administering the contract, and the steward has primary responsibility for policing how well the supervisor succeeds. The supervisor and the steward:

    - ♦ Must know the agency's personnel policies, regulations, and the contract.

    - ♦ As representatives, both may be obligated to state positions and argue for outcomes they do not favor personally.

    - ♦ Must understand and accept each other's role.

- Are under pressure from both sides and must try to resolve problems without violating the contract or going beyond the intent of labor management policies.

XI. Negotiated Grievance Procedure

A. "Grievance"—any complaint: ...

- By any employee concerning any matter relating to the employment of the employee;
- By any labor organization concerning any matter relating to the employment of any employee;
- By any employee, labor organization, or agency concerning the effect or interpretation or claimed breach of a collective bargaining agreement; or
- By any employee, labor organization, or agency concerning any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. Exclusions

- Any claimed violation of 5 U.S.C. § 7321 (relating to prohibited political activities);
- Retirement, life insurance, or health insurance;
- A suspension or removal under 5 U.S.C. § 7532 (national security);
- Any examination, certification, or appointment; or
- Classification of any position that does not reduce any employee's grade or pay.

C. Procedures

- Assure union right to present and process grievances on behalf of itself or any unit employees;
- Assure an employee the right to present grievances on his/her behalf, and assure the union the right to be present during the grievance process;
- Provide for final and binding arbitration available to be invoked by either union or agency; and
- Provide for settlement of questions of arbitrability.

D. Grievance Handling

- Before meeting
  - ♦ Inform union
  - ♦ Ensure privacy

- Set the tone - questions only
  - ♦ What's the problem?
  - ♦ What are the facts?
    Who? What? When? Where? Why?
  - ♦ What (exactly) do you want?
  - ♦ Why are you entitled to that?
    Where in the Contract/Law/Regulation does it say that?

- Offer no resolutions at the meeting

- Investigate
  - ♦ Check the facts
  - ♦ Check the Contract/Laws/Regulations
  - ♦ What have other grievance decisions said?
  - ♦ What have arbitrators said?
  - ♦ Is it a “true” practice?
  - ♦ What does management want to do?
  - ♦ What will it cost to fight?

- Make a timely decision (meet the contract’s deadlines for responses)
  - ♦ Be wary of partial relief.
  - ♦ Is it grievable?
  - ♦ If you agree to settle the grievance, grievance must be dropped.

- Mistakes to avoid
  - ♦ Little or no research
  - ♦ Rubber stamping a subordinate’s decision simply because “they’re management”
  - ♦ Denying grievances simply because “they’re union”
  - ♦ Personality clashes and power struggles
  - ♦ “Giving away the farm” to make the grievance disappear
  - ♦ Granting a no-good grievance simply to appease the union
  - ♦ Sustaining a no-good grievance as meritorious when what you really want is to cut a deal

E. The Steward's Role in Processing a Grievance

- One of the steward's most important roles is to handle grievances. Although supervisors exercise certain authority over stewards as employees, when the supervisor and the steward discuss grievances, the steward acts as an official representative of the union with status equal to the supervisor’s.

- Stewards are trained, as are supervisors, to settle a grievance as close to the source of the dispute as is possible. Like supervisors, they must live with any settlement reached. If they can arrive at a settlement, rather than having one imposed, both parties benefit.

- In handling grievances, stewards win or lose cases based on how carefully they have investigated the problem. This investigation may involve conducting interviews, determining pertinent dates, and getting names of witnesses. Stewards must ask questions for clarification, examine records, distinguish between fact and opinion, and decide what is relevant to the complaint. They must also assure themselves that the grievance is legitimate.

- When a steward receives a case, he or she should determine whether a basis for the grievance exists by investigating to see if:

    - The contract has been violated.
    - The law has been violated.
    - Government wide rules and regulations have been violated.
    - Agency regulations have been violated.
    - Past practices have been changed.
    - Employees are being treated unfairly.

- Just as stewards determine whether bargaining unit employees have legitimate grievances, supervisors should analyze any grievance received to determine whether there has been a violation of contract, law, regulation, past practice, or unfair employee treatment. If an employee files a grievance, contact your Labor Relations Specialist for assistance.

5 USC § 7121

XII. Unfair Labor Practices ("ULPs")

A. Legal basis

- An act prohibited by the FSL-MRS
- Committed by an agency or union
- Violates a right protected by the FSL-MRS

B. ULPs committed by agencies—"[I]t shall be an unfair labor practice for an agency ..."

- Section 7116(a)(1)—"... to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under [the FSL-MRS]", e.g.:
  - ♦ Threatening employees with reprisal
  - ♦ Interrogating unit employees about union activity
- Section 7116(a)(2)—"... to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment", e.g.:
  - ♦ Failure to promote because of union activities
  - ♦ Discipline in retaliation for activity as a union representative
- Section 7116(a)(3)—"... to sponsor, control, or otherwise assist any labor organization....", e.g.:
  - ♦ Campaigning for a specific individual
  - ♦ Helping union organize membership drive
  - ♦ Supervisors influencing internal union elections or serving as union officers
- Section 7116(a)(4)—"... to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony....", e.g.:
  - ♦ Transfer employee to undesirable job because he/she filed a ULP charge or representation petition for a union
- Section 7116(a)(5)—"... to refuse to consult or negotiate in good faith with a labor organization....", e.g.:

- ♦ Implement change in condition of employment without giving union an opportunity to bargain
- ♦ Bypass union (directly notify employees of a change without union present)
- ♦ Refusal to meet and discuss proposals
- ♦ Going through the motions ("surface bargaining")

- Section 7116(a)(6)—"... to fail or refuse to cooperate in impasse procedure and impasse decisions....", e.g.:

  - ♦ Refuse to permit official time to attend Impasse Panel hearing
  - ♦ Refuse to act as directed by FSIP

- Section 7116(a)(7)—"... to enforce any rule or regulation (other than a rule or regulation implementing Section 2302 of Title V) which is in conflict with any applicable collective agreement if the agreement was in effect before the date the rule or regulation was prescribed", e.g.:

    - ♦ An existing CBA takes priority over a conflicting new rule or regulation until the CBA expires unless the new rule or regulation is required by legislation

- Section 7116(a)(8)—"To otherwise fail or refuse to comply with any provision [of the Statute]", e.g.:

  - ♦ Formal discussion without giving the union an opportunity to be present
  - ♦ Failing to provide union representation during investigatory interview after "*Weingarten*" rights were properly invoked
  - ♦ Failing to supply requested information

C. ULPs committed by unions—"[I]t shall be an unfair labor practice for a labor organization ..."

- Section 7116(b)(1)—"… to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under [the FSL-MRS]", e.g.:

  - Expelling a member from the union for filing a ULP charge against union.
  - Suggesting employees must become dues paying members in order to receive full and fair union representation.

- Section 7116(b)(2)—"… to cause an agency to discriminate against any employee in the exercise by the employee of any right under [the FSL-MRS]", e.g.:

  - Encourage agency to discipline employee due to anti-union activities.

- Section 7116(b)(3)—"… to coerce, discipline, fine or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or

impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee", e.g.:

- ♦ Fining union members for violating an internal union policy concerning acceptance of overtime work as an agency employee.

- Section 7116(b)(4)—"… to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition", e.g.:

  - ♦ Refuse to represent an employee due to race, color, creed....

- Section 7116(b)(5)—"… to refuse to consult or negotiate in good faith with an agency....", e.g.:

  - ♦ Sending representatives to negotiating table who lack authority to commit union.
  - ♦ Going through the motions ("surface bargaining")

- Section 7116(b)(6)—"… to fail or refuse to cooperate in impasse procedures and impasse decisions....", e.g.:

  - ♦ Refuse to meet with mediator on issues at impasse.

- Section 7116(b)(7)—"(A) To call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor management dispute if such picketing interferes with an agency's operations…", e.g.:

  - ♦ PATCO strike in 1981

- "(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity…"

- Section 7116(b)(8)—"To otherwise fail or refuse to comply with any provision of the [FSL-MRS]", e.g.:

  - ♦ Use of official time for internal union business.

5 USC § 7116

D. Questions and Answers

1. What are grievances and ULP charges?

- In the most general sense, a "grievance" is any complaint. In labor relations, a "grievance" is a claim by an employee, union or employer ("the grievant") that a

union or employer with CBA obligations violated that CBA by failing to fulfill those obligations. A grievance is not "filed" until the grievant has made the complaint to the party who allegedly committed the violation. Most CBAs distinguish between grievances at the informal "oral" and formal "written" stages and do not consider they are "filed" until the grievant has completed and delivered to the other party a document stating the complaint.

- A "ULP charge" is a formal claim by someone ("the Charging Party") that an employer or a union ("the Charged Party") violated the applicable labor relations statute—in federal employment, the FSL-MRS. A ULP charge is filed by completing a charge form and delivering it to a Regional Office of the Federal Labor Relations Authority ("FLRA").

2. Is there a difference between grievances and ULP charges?

- Yes. The difference relates mainly to the nature of the issue and the procedure to resolve it. Grievances concern the contractual obligation of an agency or union to comply with the terms of a CBA or agency personnel regulation and are resolved authoritatively by arbitrators. ULP charges concern the legal obligation of an agency or union to comply with the terms of labor law. In the federal sector, the governing law is the FSL-MRS and ULP charges are resolved authoritatively by the FLRA and courts.

3. Can a violation of a collective bargaining agreement ever be a ULP?

- Yes, if a CBA and the FSL-MRS both obligate a party in the same way.

- In a very few cases, parties to a CBA have violated it knowingly, deliberately, and flagrantly thereby effectively repudiating the CBA as no longer in effect, e.g., by an agency which refused to process grievances.

- In addition, the FSL-MRS defines "grievance" so broadly that, at the discretion of an employee or union or agency, a ULP may be alleged as a grievance.

4. How and when may a ULP charge be filed?

- A ULP charge may be filed with a Regional Office of the FLRA any time within 6 months of the date the injured party became aware of the violation.

5. Who determines if a ULP has been committed and how do they do it?

- The FLRA decides ULPs.

- After a charge has been filed, an investigator from the FLRA's Regional Office gathers evidence (e.g., statements and documents) from the Charging and Charged

Parties and reports the results to the Regional Director ("RD") who decides whether there are or not sufficient grounds to think a ULP was committed.

- If the RD finds there are **not** sufficient grounds to think a ULP was committed, the investigator contacts the Charging Party to say the RD decided the charge lacks merit and intends to dismiss the charge unless the Charging Party withdraws it first

If the Charging Party withdraws the charge…

The RD sends the Charged Party a letter saying the charge has been withdrawn, but not saying why

About 45% of all charges (including those settled before the RD decides whether they have merit and those settled after the RD issues a formal complaint) are withdrawn

The case is closed

If the Charging Party refuses to withdraw the charge…

The RD sends the Charged Party a letter dismissing the charge and telling why, along with forms so the Charging Party may appeal to the RD's boss in Washington, D.C.

20-25% of all charges are dismissed

If the Charged Party appeals, the appeal is usually denied

If the appeal is sustained (3-5%), the case returns to the Region where it is treated as a charge with merit (see next)

- If the RD finds there **are** sufficient grounds to think a ULP was committed, the investigator contacts the Charged Party to say the RD decided the charge has merit and intends to issue a formal Complaint unless the Charged Party agrees to settle it first on terms acceptable to the RD

If the Charged Party agrees to settle…

The Charging Party, Charged Party, and RD sign a Settlement Agreement providing that the Charged Party will remedy the alleged ULP

A Settlement Agreement does not admit guilt, and many settlements include a "non-admission" clause saying so explicitly

20-25% of all charges are settled

If the Charged Party refuses to settle…

The RD issues a formal Complaint (less than 10% of all charges filed) and schedules a hearing before an Administrative Law Judge ("ALJ")

The ALJ holds the hearing to receive evidence (testimony and exhibits)

sufficient to determine officially whether a ULP was, in fact, committed
The ALJ issues a decision recommending whether the FLRA should find that a ULP was committed
Less than 1% of all charges are actually litigated
If neither party files exceptions to the ALJ's decision, it becomes effective as the decision of the FLRA
If a party does files exceptions to the ALJ's decision, the FLRA reviews that decision
A party who disagrees with the decision of the FLRA may appeal to one of the Circuit Courts of Appeal and then to the Supreme Court

6. Of course I would never deliberately say something that would be a ULP to a bargaining unit employee, but there won't be any trouble if it's just him (or her) and me one-to-one, will there?

- Wrong. There ***will*** be trouble.

- When the FLRA's Regional Office investigates a charge, the RD will not resolve a credibility conflict (e.g., "I say—you say") against the Charging Party unless the RD has an objective basis for doing so. So if you can supply a legal tape recording of what you said and it supports your denial of wrongdoing, there won't be any trouble. Otherwise, the RD will find merit to the charge, issue a Complaint, and let an ALJ decide which version to believe.

7. What happens if an agency or union is found guilty of committing a ULP?

- The FLRA may prescribe whatever remedy is necessary to correct the ULP. This may include revoking the management action that caused the ULP in the first place, and requiring management to restore the situation as it existed before the ULP. In addition, the guilty party usually must sign and post a notice to employees saying it will stop committing the ULP and will not repeat such actions in the future.

8. What punishment does the FLRA order for someone who committed a ULP?

- None. There are no fines or jail time. The sanctions available under the FSL-MRS are not "punitive" but "remedial", i.e., restore things to the way they would have been if the ULP had not been committed.

- Only agencies and unions can be guilty of ULPs. Individual persons (e.g., supervisors and union officials) are “agents” of their organizations. Thus, the organizations are held responsible for their acts.

9. The union is forever criticizing me but I'm never allowed to respond, because anything I say would be a ULP, right?

- This is not quite true. But for practical reasons, you’re doing the right thing.

- According to the law, 5 U.S.C., Chapter 71 allows freedom of expression for supervisors. However, such expression must not threaten or interfere with or discourage employee rights regarding union activity, membership, or representation. For example, any statement that may “chill” an employee’s exercise of his/her rights is probably a ULP. This includes a supervisor’s expression of his/her purely personal opinion that employees do not need a union. However, agency management may “correct the record”, i.e., correct erroneous or misleading statements of fact.

- Whether or not a supervisor's statement is a ULP does not depend on the subjective intent of the supervisor who spoke or on the subjective reaction of the actual hearers, but on the likely effect of the words on reasonable employees. This depends on all the circumstances. So call your Labor Relations Specialist for advice before you say anything! This is hard to do in the heat of an argument but...

XIII. How to Have a Disagreement *Without* Being Disagreeable

Assumptions

Conflicts--differences and disagreements—are natural and inevitable

In every conflict, there are several possible different outcomes and several possible different ways to get there

The way in which parties arrive at an outcome has an impact on that outcome—thus, even the best possible outcome can be spoiled if it is attained by unhealthy means, and even the worst possible outcome attained by healthy means will not be nearly as bad as it could have been

It is important to handle differences, disputes and disagreements—sometimes called 'fights'—openly in order to resolve them and prevent the accumulation of unresolved complaints and resentments

All is **NOT** fair in love and war

Ten Rules of a Fair Dispute

1. Specify in non-threatening language the issue you want to dispute **and** the action you want from the 'other' to improve the situation **and** what is non-negotiable
   - The words you use to state the issue can determine everything that follows—the issue should always be actions that interfere with accomplishing work to fulfill the Agency's mission
   - The issue is the other person's actions and conduct—not the other person as a person
   - The issue must be changeable objective actions rather than subjective feelings—a "bad attitude" or other feeling is not a subject for having a fair dispute, but a "bad action" is
   - The issue must be specific—"you're always late" generalizes and is not specific, but "came in an hour late each of the last three mornings" is
   - The issue must be concrete—"your office is a mess" abstracts, but "your desktop is covered with papers which should be in files and there are food crumbs on the floor" is concrete
   - Do not pre-judge the issue or the 'other' as a person—e.g., name-calling prejudges

- Avoid personalizing differences by disagreeing with statements and not with the speaker—not “you’re wrong” but “I don’t think that’s right”
- Avoid rhetorical questions or dramatic statements—not “what is your problem?” but “do you have a specific objection?”—not “why do you want to ____?” but “what specifically are you trying to accomplish?”
- The corrective action must correct the disputed issue—if the complaining party will only be satisfied by the ‘other’ doing something unrelated to the issue it brought up, the true issue is something different
- The corrective action should be as specific and concrete as the issue—“when will you ever…?” is neither specific nor concrete
- Some issues will be non-negotiable so you will be unwilling to “give in” or to “settle for less”, but must walk away from the deal
- Beware of excessive rigidity or taking frequent stands on principle—both are often mis-used to insist on having one’s own way

2. Have a dispute only by pre-arrangement and not by ambushing or surprise
   - let the ‘other’ know you have a disagreement
   - agree in advance on the issue to be disputed
   - agree on a particular time and place
   - agree on a particular place (preferably neutral territory)
   - agree on whether others will be present and what their role will be (e.g., a referee to keep the exchange of views fair—not to declare a “winner” or “loser”—or friends to keep each party calm)
3. Listen carefully and feed back
   - before responding, say back to the ‘other’ in your own words what you think **they** said in a form the ‘other’ accepts is a fair statement of what they **said**
   - do not tell the ‘other’ what you think they mean or feel
   - if the ‘other’ says you don’t understand or are stating their position incorrectly, pause in the discussion until the ‘other’ says you have it right
4. Stick to the issue—actions interfering with accomplishing the Agency’s mission
   - don’t bring up past disputes or other problems and “throw in the kitchen sink”
   - if side issues arise, set them aside for another time
   - if it turns out the real problem is something other than the agreed-upon issue, arrange a new discussion
5. Keep your body language on the same mutually acceptable and non-threatening plane
   - Do not try to gain an edge by standing when the ‘other’ sits, or by gesturing when the other keeps still, or by approaching uncomfortably close
   - Do not try to gain an edge by intimidating
6. Keep “all blows above the belt”—you probably know remarks you could make and tones of voice you could use to which the ‘other’ is sensitive and which would set them off; don’t do it
   - “Perhaps I’m not making myself clear”—NOT “Haven’t you heard a word I’ve said?”
   - “But I understood you to say…”—NOT “No, what you said was…”
7. Keep a sense of proportion

- the intensity of carrying on a dispute should be in proportion to the significance of this particular issue
- if you are the initiating party, don't exaggerate the importance of the complaint
- if you are the "defending" party, don't brush off the complaint as trivial

8. Do not expect to achieve a resolution the first time—complicated issues may require a truce and cooling-off period and rethinking before resuming the engagement
9. If a mutually acceptable resolution is possible, agree specifically on what will be done and when
    - the easiest problems to resolve ("win-win") are those in which neither party must give up anything it really wants
    - the hardest problems to resolve are those in which each party can only make a gain if the other gives it up ("win-lose")
10. If, later, you decide you are dissatisfied with the agreed-upon resolution, treat it as a new dispute

XIV. Labor Management "Partnership"

I. Partnership

- A cooperative relationship between labor and management
- An institutional arrangement (committee or council) drawing members from both labor and management
- For the purpose of involving employees and their union representatives as full partners with management in identifying problems and crafting solutions to those problems in order to better serve the employer's customers and accomplish the employer's mission

II. Partnership in the Federal Government

A. President Clinton and Executive Order 12871, "Labor-Management Partnerships", and subsequent amending Executive Orders

- An exercise of presidential managerial authority over federal agencies subject to executive authority
- Required all agencies to form labor-management partnerships and partnership councils
- Required all agencies to bargain about "permissive" subjects of bargaining listed in 5 U.S.C. § 7106(b)(1)

B. President Bush and Executive Order 13203

- Revoked Executive Order 12871, "Labor-Management Partnerships", and subsequent amending Executive Orders
- Did not prescribe any particular approach to labor-management relations
- Left decisions about which labor relations strategy best suits an agency to the discretion of that agency's management officials

XV. Interest-Based Bargaining ("IBB")

KEY CONCEPTS

ISSUE — an apparent problem to be solved; the *what*

INTEREST — a party's concern, need, and desire underlying or behind an issue; *why* the issue is being raised (mutual or separate)

POSITION — a party's proposed solution to an issue—its preferred outcome or choice of option for what to do; the *how*

PROBLEM-SOLVING STEPS

STEP ONE: CLARIFY THE ISSUE

Jointly phrase the issue in the form of a clear and unambiguous question. Do not be afraid to return to this task and revise your initial definition.

STEP TWO: SPECIFY EACH PARTY'S INTEREST IN THE ISSUE

An interest is a party's concern or need behind the issue. It expresses why constituents care, and the reason(s) why a party raised the issue. When all the interests of both parties are brought together, they provide the full scope and dimension of the issue to be resolved.

STEP THREE: BRAINSTORM OPTIONS

Do not evaluate the "pros" or "cons" of any suggested option, and generate enough to cover all the major alternatives.

STEP FOUR: DEVELOP CRITERIA

Formulate some criteria for evaluating the worth of various options.

STEP FIVE: ASSESS THE OPTIONS

Based on the criteria you formulated in Step Four, evaluate the worth of the various options.

STEP SIX: AGREE ON A CHOICE

In “interest-based” problem solving, the preferred choice is the one that maximizes the positive outcomes and/or minimizes the negative ones for all parties. Thus, it may not represent any party’s first choice.

Don't Bargain Over Positions

Problem		**Solution**
Positional Bargaining: Which Game Should You Play?		Change the Game Negotiate on the Merits
SOFT	**HARD**	**PRINCIPLED**
Participants are friends	Participants are adversaries	Participants are problem-solvers
The goal is agreement	The goal is victory	The goal is a wise outcome reached efficiently and amicably
Make concessions to cultivate the relationship	Demand concessions as a condition of the relationship	Separate the people from the problem
Be soft on the people and the problem	Be hard on the problem and the people	Be soft on the people, hard on the problem
Trust others	Distrust others	Proceed independent of trust
Change your position easily	Dig in on your position	Focus on interests, not positions
Make offers	Make threats	Explore interests
Disclose your bottom line	Mislead as to your bottom line	Avoid having a bottom line
Accept one-sided losses to reach agreement	Demand one-sided gains as the price of agreement	Invent options for mutual gain
Concede the one answer *they* will accept	Hold out for the one answer *you* will accept	Develop multiple options to choose from—decide later
Insist on agreement	Insist on your position	Insist on using objective criteria
Try to avoid a contest of will	Try to win a contest of will	Try to reach a result based on standards independent of will
Yield to pressure	Apply pressure	Reason and be open to reasons—yield to principle, not pressure

XVI. Labor Relations Terms

1. ADMINISTRATIVE LAW JUDGE (ALJ)
An attorney authorized to conduct certain hearings and make 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 unless one of the parties files an exception to the decision with the FLRA. If that happens, the FLRA reviews the decision and adopts, overturns or alters the decision, or may even send it back to the ALJ for further work.

2. 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.

3. 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)]

4. 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.

5. ARBITRABILITY
Refers to whether a matter is subject to arbitration under the negotiated grievance procedure of the CBA. Disputes about arbitrability are usually either jurisdictional (whether the substance of the dispute is within the arbitrator's jurisdiction) or procedural (whether the grievant failed to satisfy procedural requirements to initiate or preserve a viable grievance). If the parties disagree as to whether or not a matter is arbitrable, the arbitrator must resolve this threshold issue before reviewing the merits of the dispute.

6. ATTORNEY FEES
Under 5 U.S.C. § 5596 (Back Pay Act), an award of reasonable fees paying the cost of legal counsel if there is a determination by an arbitrator or the Merit Systems Protection Board that an unjustified or unwarranted personnel action caused 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.

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

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

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

10. BARGAINING UNIT
A distinguishable agency, plant, installation, functional or other group of employees appropriate to be represented by a labor organization for purposes of collective bargaining. A bargaining unit may or may not be represented by a labor organization, and includes all employees without regard to whether they are union members, or—if they are—are in “good standing” with the union.

11. 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 affecting their conditions of employment. Title VII is codified at 5 U.S.C. Chapter 71.

12. 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.

13. COLLECTIVE BARGAINING AGREEMENT (AGREEMENT, CBA, CONTRACT, NEGOTIATED AGREEMENT)
An agreement between an employer and a labor organization setting 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. CBAs are almost always embodied in written documents, and usually have a definite term or duration.

14. 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.

15. CONDITIONS OF EMPLOYMENT
Personnel policies, practices and matters whether established by rule, regulation or otherwise, affecting working conditions. It does not include policies, practices and matters relating to prohibited political activities, to the classification of any position, or to the extent the matters are specifically provided for by statute.

16. DUES ALLOTMENT (DUES WITHHOLDING, DUES CHECK OFF)
Practice whereby the employer, by agreement with the union (and upon written authorization from the employee), regularly withholds union dues from bargaining unit employees' wages and transmits these funds to the Union. Dues allotment occurs without charge to the employee or the union. [See 5 U.S.C. § 7115.]

17. 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.

18. 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: (1) because the award is contrary to a 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; resolves issues not submitted to arbitration; grants a remedy exceeding the 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.

19. EXCLUSIVE RECOGNITION/REPRESENTATIVE
The status conferred on a labor organization which (1) receives a majority of votes cast in a representation election; and (2) is certified by the Federal Labor Relations Authority (FLRA) to represent all employees in an appropriate unit. A union having exclusive recognition is authorized to act for the employees in the bargaining unit and negotiate agreements on their behalf as their only representative. An agency may not negotiate with any union other than the exclusive representative. An exclusive representative is obligated to represent all unit members fairly without discrimination because of their membership/non-membership in the union, payment/non-payment of dues, or any other reason.

20. FEDERAL LABOR RELATIONS AUTHORITY (FLRA or AUTHORITY)
An administrative body empowered by Title VII of the Civil Service Reform Act of 1978 which interprets and oversees compliance with the Federal Service Labor Management Relations Statute. The FLRA maintains 9 regional offices.

21. FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)
An independent Federal agency which provides mediators to assist parties in negotiations or labor disputes to reach a settlement. In addition, on request, FMCS provides lists of qualified arbitrators and engages in various types of "preventive mediation."

22. FEDERAL SERVICE IMPASSES PANEL (FSIP or PANEL)
Organizational entity within the FLRA which resolves bargaining impasses in the Federal service. The Panel may recommend procedures, including arbitration, for the settlement of impasses or it may direct the terms of settlement. In the Federal sector, FSIP provides the exclusive legal means to resolve bargaining impasses which, in the private sector, would be resolved legally by the persuasive effect of strikes and lockouts.

23. 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.

24. GOOD FAITH BARGAINING
The standard of dealings imposed on an agency and an exclusive representative which includes the obligation to 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 relevant and necessary data requested by the union to the extent required or permitted by law.

25. GRIEVANCE
Any complaint by an employee concerning any matter relating to the employment of the employee; by a labor organization concerning any matter relating to the employment of an employee; or by a labor organization, an agency, or an employee concerning interpretation or violation of the collective bargaining agreement or a violation, interpretation or application of a 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.

26. GRIEVANCE ARBITRATION (RIGHTS ARBITRATION)
A third party procedure to obtain an authoritative interpretation of language in a CBA, 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. [compare **Interest Arbitration**]

27. IMPACT AND IMPLEMENTATION (I & I) BARGAINING
Although an agency has no obligation to bargain about what it decides when exercising a "management right" listed under 5 U.S.C. § 7106(b)(2), it is obligated under 5 U.S.C. § 7106(a) to negotiate as to: (1) measures to soften the blow of implementing such decisions; and (2) the procedures followed in implementing those decisions.

28. IMPASSE (DEADLOCK, STALEMATE)
A situation in which the parties are unable to reach a settlement or agreement on terms agreeable to both.

29. INTEREST ARBITRATION
Occurs when an impartial third party 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. [compare **Grievance Arbitration**]

30. 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**.]

31. 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**.]

32. MANAGEMENT RIGHTS
The right of management to make day to day personnel decisions and to direct the workforce without notification to or consultation with the exclusive representative. Any changes in the exercise of these rights, however, would require notice to the exclusive representative and negotiations upon demand, if requested in a timely manner, on the impact and implementation of the decision. [See 5 U.S.C. § 7106]

33. 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. Mediation is required before a negotiated impasse can be referred to the FSIP.

34. MID-TERM NEGOTIATIONS
The right, under certain circumstances, to initiate bargaining during the term of a collective bargaining agreement.

35. 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.

36. 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.

37. 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 nonnegotiability to the FLRA.

38. NEGOTIATED GRIEVANCE PROCEDURE (NGP)
A systematic procedure agreed to by the negotiating parties for the resolution of grievances. The NGP is applicable only to employees in the bargaining unit. The scope of the NGP 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 covered by an NGP: (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 an NGP in all agreements with binding arbitration as the final step.

39. 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].

40. OPM
The Office of Personnel Management. OPM supports Government program managers in their personnel management responsibilities through a range of programs. This includes administering a merit system for Federal employment; providing services related to retirement, health benefits and life insurance benefits for federal employees.

41. OPPOSITION TO EXCEPTION TO ARBITRATION AWARD
Under 5 CFR 2425.1, if one party files with the Authority an exception (appeal) to an arbitrator's award, the other party may file a document stating its grounds for opposing the exception. Oppositions must be filed within thirty (30) days after the date the exception was served.

42. 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 proposal will be advanced with the condition that it must either be accepted or rejected entirely as presented, i.e., as a package.

43. PAST PRACTICE
Existing way of doing things, sanctioned by use and acceptance, which amount to 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 the practice: (1) involves a “condition of employment”; (2) was exercised consistently for an extended period of time; (3) was known to both parties; and (4) was followed by both parties, or followed by one party and not challenged by the other. If a practice does not involve a “condition of employment”, it does not become a condition of employment either through practice or agreement.

44. PICKETING (INFORMATIONAL PICKETING)
Demonstrating, usually near the place of employment, to advise the public as to the existence of a labor management dispute and 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. An employee may engage in **informational picketing** only outside his/her established duty hours or the employee must be in an approved leave status.

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

46. REOPENING CLAUSE
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. Reopenings usually restrict the number of issues subject to negotiation during the term of an agreement.

47. 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.

48. SHOP 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.

49. 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 § 7116(b)(7) of the Federal Service Labor Management Relations Statute. The Statute also prohibits slowdowns, sickouts and related tactics.

50. SUPERVISOR
Under 5 U.S.C. § 7103, an individual employed by an agency having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove unit employees; adjust their grievances or to effectively recommend such action. The performance of one or more of these duties qualifies an employee as a "supervisor" for labor relations purposes and excludes the employee from the bargaining unit. However, nurses and firefighters must spend a preponderance of their time doing so to be considered supervisors.

51. UNFAIR LABOR PRACTICE (ULP)
Action by either an employer or union violating rights granted by the Federal Service Labor Management Relations Statute [5 U.S.C. § 7102] by committing acts prohibited [5 U.S.C. § 7116] by that Statute. A ULP charge may be filed by the agency, union or employees.

52. UNILATERAL ACTION
Implementation of management decisions changing working conditions without providing the union advance notice of such changes and an opportunity to negotiate to the extent permitted by law.

53. WAIVER
A party's relinquishment of the exercise of a right. A party may waive a right by bilateral agreement, by unilaterally declaring that it is waiving a right, or by failing to act on a right when it should have done so. For a waiver to be enforceable, it must be "clear and unmistakable." Management cannot waive rights reserved to it by 5 U.S.C. § 7106(a).

54. "*WEINGARTEN*" RIGHT
Refers to the right of an employee to have union representation present: (1) during an investigatory examination of the employee conducted by an agency representative; when (2) the employee reasonably believes disciplinary action against him/her may

result; and (3) the employee has requested such union representation. Name "*Weingarten*" taken from the 1975 Supreme Court decision upholding the National Labor Relations Board's inference of a virtually identical right from the National Labor Relations Act ("NLRA") applying to employees in the private sector. When it enacted the FSL-MRS, Congress provided the right in § 7114(a)(2) explicitly. [See **Investigatory Examination**.]

55. ZIPPER CLAUSE

A collective bargaining agreement provision specifically waiving the parties' rights to reopen negotiations during the term of the agreement. [For a related term, see **Reopening Clause**.]

XVII. Relevant Cases

	Section Title	
I	Employee Rights	
II	Representation of Employees	
III	Union Rights and Responsibilities	
IV	Official Time	
V	Union's Right to Obtain (Agency's Obligation to Furnish) Information	
VI	Formal Discussion	10 FLRA No. 24 (1982) 52 FLRA No. 17 (1996) 37 FLRA No. 60 (1990) 47 FLRA No. 11 (1993) 38 FLRA No. 61 (1990)
VII	Investigative Interviews—"*Weingarten*" Rights	*NLRB v. WEINGARTEN, INC.*, 420 U.S. 251 (1975)
VIII	Management Rights	
IX	Changes in "Conditions of Employment"	
X	Contract Administration	
XI	Negotiated Grievance Procedure	
XII	Unfair Labor Practices ("ULPs")	9 FLRA 199 (1982) (re statements)
XIII	How to Have a Disagreement *Without* Being Disagreeable	
XIV	Labor-Management "Partnership"	
XV	Interest-Based Bargaining ("IBB")	

XVIII. Suggestions: Using this Guide

1. Bind this Guide in a three-ring binder, separate each section with a divider tab, and add new materials to the notebook following the pages of the Guide most closely pertaining to the subject of the new materials.

2. Re-read each section from time to time.

3. Occasionally visit each of the websites listed below, read articles that appear interesting, and—if they seem relevant and valuable to you—print them out for inclusion as suggested by #1 above.

4. Search for other relevant and valuable websites and add them to this list.

Relevant websites

http://www.usda.gov/da/employ/LR.htm	Homepage for Labor Relations at the Department of Agriculture—a library of relevant documents
http://www.flra.gov/	Homepage of Federal Labor Relations Authority—a library of relevant documents
http://www.opm.gov/lmr/index.asp	Homepage for Labor Relations on OPM's website—a library of relevant documents
http://www.fmcs.gov/internet/	Homepage of Federal Mediation & Conciliation Service—a library of documents and forms relevant to bargaining and arbitration
http://www.cpms.osd.mil/fas/index.html	Homepage for the Labor Relations Team, Field Advisory Services, Department of Defense—a library of relevant documents
http://www.cmd.faa.gov/LR SAMs/default.htm	FAA Center for Management Development website for Stand Alone On Line Training Modules—point and click interactive instruction
http://www2.faa.gov/region/aso/hrmd/supvlr.htm	FAA Southern Region supervisor's guide to labor relations—extensive and detailed
http://ngl.natca.org/cmdlmr/	FAA Manager's Labor Management Relations Course materials (ca. 1997) obtained by union and posted on its website—extensive and detailed
http://www.colorado.edu/conflict/peace/example/fish7513.htm	Summary of classic text on IBB, *Getting to Yes: Negotiating Agreement Without Giving In*, by Fisher and Ury

http://ngl.natca.org/	NATCA Facility Representative (steward) training program materials
http://www.nlrb.gov/	Homepage of National Labor Relations Board—a library of documents and forms relevant to the federal law governing private sector labor relations since 1935
http://www.jagcnet.army.mil/JAGCNETInternet/Homepages/AC/TJAGSAWeb.nsf/	U.S. Army Judge Advocate General “Law of Federal Labor-Management Relations” course materials (2001)—extensive, well-organized and detailed

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