



Department of Defense **INSTRUCTION**

NUMBER 1354.01
January 19, 2007

USD(P&R)

SUBJECT: DoD Policy on Organizations That Seek to Represent or Organize Members of the Armed Forces in Negotiation or Collective Bargaining

- References:
- (a) DoD Directive 1354.1, subject as above, November 25, 1980 (hereby canceled)
 - (b) Acting Deputy Secretary of Defense Memorandum, "DoD Directives Review – Phase II," July 13, 2005
 - (c) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," October 17, 2006
 - (d) Sections 7101-7135, 2104, and 2105 of Title 5, United States Code
 - (e) through (g) see Enclosure 1

1. REISSUANCE AND PURPOSE

This Instruction:

1.1. Reissues Reference (a) as a DoD Instruction in accordance with the guidance in Reference (b) and the authority in Reference (c).

1.2. Establishes DoD policies, procedures, and guidelines for organizations whose objective is to organize or represent members of the Armed Forces of the United States for purposes of negotiating or bargaining about terms or conditions of military service. The policies, procedures, and guidelines set forth herein are designed to promote the readiness of the Armed Forces to defend the United States.

1.3. Does not modify or diminish the existing authority of commanders to control access to or maintain good order and discipline on military installations; nor does it modify or diminish the obligations of commanders and supervisors under sections 7101-7135 of Reference (d) with respect to organizations representing DoD civilian employees.

2. APPLICABILITY AND SCOPE

2.1. This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred collectively as the “DoD Components”). This Instruction also applies to individuals and groups entering, using, or seeking to enter or use military installations.

2.2. This Instruction does not limit the application of the Uniform Code of Military Justice, sections 801-940 of title 10, United States Code (Reference (e)), or section 976 of Reference (e) including the prohibitions and criminal penalties set forth therein with respect to matters that are the subject of this Instruction or that are beyond its scope.

3. DEFINITIONS

Terms used in this Instruction are defined in Enclosure 2.

4. POLICY

Pursuant to Public Law No. 95-610 (Reference (f)), it is DoD policy that:

4.1. Members of the Armed Forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens.

4.2. Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

4.3. The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the Armed Forces and their military and civilian superiors.

4.4. Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the Armed Forces.

4.5. Unionization of the Armed Forces would be incompatible with the military chain of command; would undermine the role, authority, and position of the commander; and would impair the morale and readiness of the Armed Forces.

4.6. The circumstances that could constitute a threat to the ability of the Armed Forces to perform their mission are not comparable to the circumstances that could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the Armed Forces.

5. PROHIBITED ACTIVITY

5.1. Membership and Enrollment

5.1.1. A member of the Armed Forces, knowing of the activities or objectives of a particular military labor organization, may not:

5.1.1.1. Join or maintain membership in such organization; or

5.1.1.2. Attempt to enroll any other member of the Armed Forces as a member of such organization.

5.1.2. No person on a military installation, and no member of the Armed Forces, may enroll in a military labor organization any member of the Armed Forces or solicit or accept dues or fees for such an organization from any member of the Armed Forces.

5.2. Negotiation or Bargaining

5.2.1. No person on a military installation, and no member of the Armed Forces, may negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the Armed Forces, on behalf of members of the Armed Forces, concerning the terms or conditions of service of such members.

5.2.2. No member of the Armed Forces, and no civilian officer or employee of the Department of Defense, may negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the Armed Forces with any person who represents or purports to represent members of the Armed Forces.

5.3. Strikes and Other Concerted Activity

5.3.1. No person on a military installation, and no member of the Armed Forces, may organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the Armed Forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the Armed Forces, to:

5.3.1.1. Negotiate or bargain with any person concerning the terms or conditions of service of any member of the Armed Forces,

5.3.1.2. Recognize any military labor organization as a representative of individual members of the Armed Forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the Armed Forces, or

5.3.1.3. Make any change with respect to the terms or conditions of service in the Armed Forces of individual members of the Armed Forces.

5.3.2. No person may use any military installation for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this Instruction.

5.3.3. No member of the Armed Forces, and no civilian officer or employee of the Department of Defense, may permit or authorize the use of any military installation for any meeting, march, picketing, demonstration, or other similar activity that is for the purpose of engaging in any activity prohibited by this Instruction.

5.4. Representation. A military labor organization may not represent, or attempt to represent, any member of the Armed Forces before any civilian officer or employee, or any member of the Armed Forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the Armed Forces.

6. ACTIVITY NOT COVERED BY THIS INSTRUCTION

6.1. This Instruction does not limit the right of any member of the Armed Forces to:

6.1.1. Join or maintain membership in any lawful organization or association not constituting a "military labor organization" as defined in Enclosure 2 of this Instruction;

6.1.2. Present complaints or grievances concerning the terms or conditions of the service of such member in the Armed Forces in accordance with established military procedures;

6.1.3. Seek or receive information or counseling from any source;

6.1.4. Be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

6.1.5. Petition the Congress for redress of grievances; or

6.1.6. Take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

6.2. This Instruction does not prevent commanders or supervisors from giving consideration to the views of any member of the Armed Forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

6.3. This Instruction does not prevent any civilian employed at a military installation from joining or being a member of an organization that engages in representational activities with respect to terms or conditions of civilian employment.

7. RESPONSIBILITIES

7.1. The Heads of DoD Components shall:

7.1.1. Ensure compliance with this Instruction and with the guidelines contained in Enclosure 3 of this Instruction.

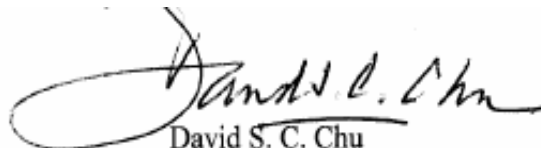
7.1.2. Establish procedures to ensure that any action initiated pursuant to this Instruction is reported immediately to the Head of the DoD Component concerned.

7.1.3. Report any action initiated pursuant to this Instruction immediately to the Secretary of Defense.

7.2. The Deputy Under Secretary of Defense (Program Integration), under the Under Secretary of Defense for Personnel and Readiness, shall serve as the administrative point of contact in the Office of the Secretary of Defense for all matters relating to this Instruction.

8. EFFECTIVE DATE

This Instruction is effective immediately.



David S. C. Chu
Under Secretary of Defense for
Personnel and Readiness

Enclosures - 3

- E1. References, continued
- E2. Definitions
- E3. Guidelines

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Sections 801-940, 976 of Title 10, United States Code
- (f) Public Law 95-610 (10 United States Code §976 note)
- (g) DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," January 7, 1980

E2. ENCLOSURE 2

DEFINITIONS

For the purposes of this Instruction, the following definitions apply:

E2.1. Member of the Armed Forces. A member of the Armed Forces who is serving on active duty or a member of a Reserve component while performing inactive duty training.

E2.2. Military Labor Organization. Any organization that engages in or attempts to engage in:

E2.2.1. Negotiating or bargaining with any civilian officer or employee, or with any member of the Armed Forces, on behalf of members of the Armed Forces, concerning the terms or conditions of military service of such members in the Armed Forces;

E2.2.2. Representing individual members of the Armed Forces before any civilian officer or employee, or any member of the Armed Forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the Armed Forces; or

E2.2.3. Striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the Armed Forces, to:

E2.2.3.1. Negotiate or bargain with any person concerning the terms or conditions of military service of any member of the Armed Forces,

E2.2.3.2. Recognize any organization as a representative of individual members of the Armed Forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the Armed Forces, or

E2.2.3.3. Make any change with respect to the terms or conditions of military service of individual members of the Armed Forces.

E2.3. Civilian Officer or Employee. An employee, as defined in Section 2105 of Reference (d) or Civilian Officer as defined in Section 2104 of Reference (d).

E2.4. Military Installations. Includes installations, reservations, facilities, vessels, aircraft, and other property controlled by the Department of Defense.

E2.5. Negotiation or Bargaining. A process whereby a commander or supervisor acting on behalf of the United States engages in discussions with a member or members of the Armed Forces (purporting to represent other such members), or with an individual, group, organization, or association purporting to represent such members, for the purpose of resolving bilaterally terms or conditions of military service.

E2.6. Terms or Conditions of Military Service. Terms or conditions of military compensation or duty including but not limited to wages, rates of pay, duty hours, assignments, grievances, or disputes.

E3. ENCLOSURE 3

GUIDELINES

The guidelines for making certain factual determinations are as follows:

E3.1. In determining whether an organization is a military labor organization, whether a person is a member of a military labor organization, or whether such person or organization is in violation of any provision of this Instruction, the history and operation of the organization (including its constitution and bylaws, if any) or person in question may be evaluated, along with evidence on the conduct constituting a prohibited act.

E3.2. In determining whether the commission of a prohibited act by a person can be imputed to the organization, examples of factors that may be considered include: the frequency of such act; the position in the organization of persons committing the act; whether the commission of such act was known by the leadership of the organization; whether the commission of the act was condemned or disavowed by the leadership of the organization.

E3.3. Any information about persons and organizations not affiliated with the Department of Defense needed to make the determinations required by this Instruction shall be gathered in strict compliance with the provisions of DoD Directive 5200.27 (Reference (g)), and shall not be acquired by counterintelligence or security investigative personnel. The organization itself shall be considered a primary source of information.