

ASSOCIATION OF CIVILIAN TECHNICIANS

OFFICER & STEWARD

MANUAL

Keep The Faith



Duty...Dedication...Dignity

REPRESENTING NATIONAL GUARD CIVILIAN TECHNICIANS Since 1960

ASSOCIATION OF CIVILIAN TECHNICIANS

THOMAS G. BASTAS

NATIONAL PRESIDENT



CONGRATULATIONS, ACT REPRESENTATIVE!

You've taken on a key position in this exceptional civilian technician association. On behalf of the National Executive Board, and myself, I would like to commend you for undertaking this responsibility.

There will be many times when you'll have the satisfaction of hearing "a job well done." Other times you may wonder if it's worth all the effort and time spent outside of your employed position.

Without your diligence as a representative, technicians' rights may possibly be ignored, eroded or violated. Therefore, it is through your efforts that due process for your co-workers will be protected; through a representative of ACT.

With you as an ACT representative the full scope of the Labor/Management Relations Act is certain to be complied with and thereby fully protecting all of the interests of your fellow civilian technicians.

Your collective bargaining agreement is the most important tool to aid you in your role as an ACT representative. You must know and understand your contractual provisions; most important is your grievance procedure. Read all of the contract articles carefully. Commit them to memory! Apply them with duty, dignity, dedication, and you will successfully accomplish your representational goals.

Once you are able to competently discharge the responsibilities of being an association representative you will go about your duties with the certain knowledge that your fellow members will then believe in what is right and stand behind the truth. You will be trusted, relied upon, and looked to for guidance in protecting their rights. You will also know that this National Technician Labor Organization will stand by you.

Keep the Faith,

Thomas G. Bastas
National President ACT

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THE ROLE OF THE STEWARD

The steward holds an important position in the Chapter, and the effectiveness of the Association depends on your every action. You need to be well informed regarding your duties, your responsibilities and the rights of your members. The stewards along with the supervisor play a vital role in the operating efficiency of the agency unit.

A steward should know his agency regulations and policies as well as the labor management agreement. They should be familiar with their fellow employees in their area of responsibility and should have a working knowledge of benefits and entitlements available to the technician workforce.

Know the method/steps of grievance handling within your agency. Be sure to keep within the time limits of each step. You may have the best grievance in the world, but end up losing it because you failed to meet the time lines.

Your success as a steward depends partly on your ability to resolve problems at the lowest level possible. Approaching the supervisor as an equal, seeking a solution to a potential grievance. You are protected from retaliation in the performance of your steward duties under Federal Statutes.

Answer questions of members and non-members regarding their rights as Federal employees and as Association members. Should you not know the answers, don't fake it! Get the needed answers from your local officers, or your national field representative. This will insure your integrity as well as that of the Association.

The steward is a vital link in the building of membership and is responsible for recruiting and retaining members in the Association.

ASSOCIATION OF CIVILIAN TECHNICIANS

OFFICERS & STEWARDS TRAINING MANUAL

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FORWARD

Public Law 95-454: The Congress finds that - - 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.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

The importance of the steward's role has increased greatly as a result of the Civil Service Reform Act (P.L. 95-454). The steward is the vital link in keeping a constructive relationship working between the Association and Management.

Taking into consideration the different functions a steward must perform, and the different states and activities with which we, as an Association must deal, we have confined ourselves mainly to general principals of stewardship which, with minor adaptations, could be used in any state or activity.

The steward in each activity will have to supplement this information with other material pertinent to his own state regulations and policies, and the negotiated bargaining agreement, to solve problems peculiar to his own installation.

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SECTION 1

NATIONAL GUARD TECHNICIAN ACT

**Public Law 90-486
32 U.S.C / Chapter 7 / Section 709
Technician Employment Use Status**

&

**5 U.S.C Chapter 71
Federal Service Labor / Management Relations Statute**

&

**BACK PAY ACT
5 U.S.C. SECTION 5596 (b)**

NATIONAL GUARD TECHNICIAN ACT
32 U.S.C / Chapter 7 / Section 709
Technician Employment Use Status

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsections (b) and (c), persons may be employed as technicians in -

- (1)** the administration and training of the National Guard; and
- (2)** the maintenance and repair of supplies issued to the National Guard or the armed forces.

(b) Except as authorized in subsection (c), a person employed under subsection (a) must meet each of the following requirements:

- (1)** Be a military technician (dual status) as defined in section [10216](#)(a) of title [10](#).
- (2)** Be a member of the National Guard.
- (3)** Hold the military grade specified by the Secretary concerned for that position.
- (4)** While performing duties as a military technician (dual status), wear the uniform appropriate for the member's grade and component of the armed forces.

(c)

- (1)** A person may be employed under subsection (a) as a non-dual status technician (as defined by section [10217](#) of title 10) if the technician position occupied by the person has been designated by the Secretary concerned to be filled only by a non-dual status technician.
- (2)** The total number of non-dual status technicians in the National Guard is specified in section [10217](#)(c)(2) of title [10](#).

(d) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title to employ and administer the technicians authorized by this section.

(e) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed in that position is required under subsection (b) to be a member of the National Guard.

(f) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned -

- (1)** a person employed under subsection (a) who is a military technician (dual status) and otherwise subject to the requirements of subsection (b) who -

(A) is separated from the National Guard or ceases to hold the military grade specified by the Secretary concerned for that position shall be promptly separated from military

technician (dual status) employment by the adjutant general of the jurisdiction concerned;
and,

(B) fails to meet the military security standards established by the Secretary concerned for a member of a reserve component under his jurisdiction may be separated from employment as a military technician (dual status) and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(2) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(3) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(4) a right of appeal which may exist with respect to paragraph (1), (2), or (3) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(5) a technician shall be notified in writing of the termination of his employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.

(g) Sections [2108](#), [3502](#), [7511](#), and [7512](#) of title 5 do not apply to a person employed under this section.

(h) Notwithstanding sections [5544](#)(a) and [6101](#)(a) of title 5 or any other provision of law, the Secretary concerned may prescribe the hours of duty for technicians. Notwithstanding sections [5542](#) and [5543](#) of title [5](#) or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved

TITLE 5 OF THE UNITED STATES CODE
GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III--EMPLOYEES
SUBPART F--LABOR-MANAGEMENT AND
EMPLOYEE RELATIONS
CHAPTER 71
LABOR-MANAGEMENT RELATIONS

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**5 U.S.C Chapter 71
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**SUBCHAPTER I--
GENERAL PROVISIONS**

§ 7101. Findings and purpose

(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.

§ 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right--

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

§ 7103. Definitions; application

(a) For the purpose of this chapter--

(1) "person" means an individual, labor organization, or agency;

(2) "employee" means an individual--

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include--

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the International Communication Agency, the Agency for International Development, the Department of Agriculture, or the Department of Commerce; or

(v) any person who participates in a strike in violation of section 7311 of this title;

(3) "agency" means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Department of Veterans Affairs), the Library of Congress, the Government Printing Office, and the Smithsonian Institution, but does not include--

(A) the General Accounting Office;

(B) the Federal Bureau of Investigation;

(C) the Central Intelligence Agency;

(D) the National Security Agency;

(E) the Tennessee Valley Authority;

(F) the Federal Labor Relations Authority;

(G) the Federal Service Impasses Panel; or

(H) the United States Secret Service and the United States Secret Service Uniformed Division.

(4) "labor organization" means 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, but does not include--

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin,

sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(5) "dues" means dues, fees, and assessments;

(6) "Authority" means the Federal Labor Relations Authority described in section 7104(a) of this title;

(7) "Panel" means the Federal Service Impasses Panel described in section 7119(c) of this title;

(8) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

(9) "grievance" means any complaint--

(A) by any employee concerning any matter relating to the employment of the employee;

(B) by any labor organization concerning any matter relating to the employment of any employee; or

(C) by any employee, labor organization, or agency concerning--

(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

(10) "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;

(11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

(12) "collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach

agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

(13) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(14) "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--

- (A)** relating to political activities prohibited under subchapter III of chapter 73 of this title;
- (B)** relating to the classification of any position; or
- (C)** to the extent such matters are specifically provided for by Federal statute;

(15) "professional employee" means--

- (A)** an employee engaged in the performance of work--
 - (i)** requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);
 - (ii)** requiring the consistent exercise of discretion and judgment in its performance;
 - (iii)** which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and
 - (iv)** which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or
- (B)** an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) "exclusive representative" means any labor organization which--

- (A)** is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or
- (B)** was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit--

(i) on the basis of an election; or

(ii) on any basis other than an election, and continues to be so recognized in accordance with the provisions of this chapter;

(17) "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use firefighting apparatus and equipment; and

(18) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b)(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that--

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

§ 7104. Federal Labor Relations Authority

(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority. The Chairman is the chief executive and administrative officer of the Authority.

(c) A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of--

(1) the date on which the member's successor takes office, or

(2) the last day of the Congress beginning after the date on which the member's term of office would (but for this paragraph) expire.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and decisions it has rendered.

(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may--

- (A)** investigate alleged unfair labor practices under this chapter,
- (B)** file and prosecute complaints under this chapter, and
- (C)** exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

§ 7105. Powers and duties of the Authority

(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority--

- (A)** determine the appropriateness of units for labor organization representation under section 7112 of this title;
- (B)** supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;
- (C)** prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;
- (D)** prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;
- (E)** resolve issues relating to the duty to bargain in good faith under section 7117(c) of this title;

under section 7117(d) of this title;

- (G)** conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;
- (H)** resolve exceptions to arbitrator's awards under section 7122 of this title; and
- (I)** take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

- (b) The Authority shall adopt an official seal which shall be judicially noticed.
- (c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.
- (d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.
- (e)(1) The Authority may delegate to any regional director its authority under this chapter--
- (A) to determine whether a group of employees is an appropriate unit;
 - (B) to conduct investigations and to provide for hearings;
 - (C) to determine whether a question of representation exists and to direct an election; and
 - (D) to supervise or conduct secret ballot elections and certify the results thereof.
- (2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.
- (f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of--
- (1) the date of the action; or
 - (2) the date of the filing of any application under this subsection for review of the action; the action shall become the action of the Authority at the end of such 60-day period.
- (g) In order to carry out its functions under this chapter, the Authority may--
- (1) hold hearings;
 - (2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and
 - (3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

§ 7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency--

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws--

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from--

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating--

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

**SUBCHAPTER II--
RIGHTS AND DUTIES OF AGENCIES AND
LABOR ORGANIZATIONS**

§ 7111. Exclusive recognition of labor organizations

(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.

(b) If a petition is filed with the Authority--

(1) by any person alleging--

(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after a reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which--

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose--

- (1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or
- (2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

- (e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.
- (f) Exclusive recognition shall not be accorded to a labor organization--
 - (1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;
 - (2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;
 - (3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless--
 - (A) the collective bargaining agreement has been in effect for more than 3 years, or
 - (B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or
 - (4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.
- (g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

§ 7112. Determination of appropriate units for labor organization representation

- (a) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.
- (b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to

which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes--

- (1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;
 - (2) a confidential employee;
 - (3) an employee engaged in personnel work in other than a purely clerical capacity;
 - (4) an employee engaged in administering the provisions of this chapter;
 - (5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;
 - (6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or
 - (7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.
- (c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization--
- (1) which represents other individuals to whom such provision applies; or
 - (2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.
- (d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

§ 7113. National consultation rights

- (a) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.
- (b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall--
- (A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization--

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

§ 7114. Representation rights and duties

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at--

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if--

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from--

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation--

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

§ 7115. Allotments to representatives

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and

periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when--

(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

§ 7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency--

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(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 under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization-

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(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;

(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;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(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, or

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

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure--

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121(e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be

raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

- (e) The expression of any personal view, argument, opinion or the making of any statement which--
 - (1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,
 - (2) corrects the record with respect to any false or misleading statement made by any person, or
 - (3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat or reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if--

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

(B) the Authority determines that a compelling need for a rule or regulation does not exist.

(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by--

(A) filing a petition with the Authority; and

(B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall--

(A) file with the Authority a statement--

(i) withdrawing the allegation; or

(ii) setting forth in full its reasons supporting the allegation; and

(B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefore at the earliest practicable date.

(d)(1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall--

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization--

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

§ 7118. Prevention of unfair labor practices

(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice--

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

(C) of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of--

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period, the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order--

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter. If any such order requires reinstatement of any employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

§ 7119. Negotiation impasses; Federal Service Impasses Panel

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what matter it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse--

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasses, but only if the procedure is approved by the Panel.

(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either--

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including fact-finding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may--

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

§ 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for--

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that--

(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and

desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation--

- (1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or
- (2) take any other appropriate disciplinary action.

**SUBCHAPTER III--
GRIEVANCES, APPEALS, AND REVIEW**

§ 7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e) and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in subsection (a) of this section shall--

(A) be fair and simple,

(B) provide for expeditious processing, and

(C) include procedures that--

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2)(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order--

(i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning--

(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

- (3) a suspension or removal under section 7532 of this title;
- (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.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g)(1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For

purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected--

(A) the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

(h) Settlements and awards under this chapter shall be subject to the limitations in section 5596(b)(4) of this title.

§ 7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient--

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations; the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

§ 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under--

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination), may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the

person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

**SUBCHAPTER IV--
ADMINISTRATIVE AND OTHER PROVISIONS**

§ 7131. Official time

- (a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.
- (b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non duty status.
- (c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.
- (d) Except as provided in the preceding subsections of this section--
- (1) any employee representing an exclusive representative, or
 - (2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative, shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

§ 7132. Subpoenas

- (a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may--
- (1) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and
 - (2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence. No subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.
- (b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.
- (c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

§ 7133. Compilation and publication of data

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

§ 7134. Regulations

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

(a) Nothing contained in this chapter shall preclude--

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.

BACK PAY ACT
5 U.S.C. SECTION 5596 (b)

§ 5596. Back pay due to unjustified personnel action

(a) For the purpose of this section, “agency” means—

- (1)** an Executive agency;
- (2)** the Administrative Office of the United States Courts, the Federal Judicial Center, and the courts named by section 610 of title 28;
- (3)** the Library of Congress;
- (4)** the Government Printing Office;
- (5)** the government of the District of Columbia;
- (6)** the Architect of the Capitol, including employees of the United States Senate Restaurants; and
- (7)** the United States Botanic Garden.

(b) (1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, or under chapter 11 of title I of the Foreign Service Act of 1980, shall be awarded in accordance with standards established under section 7701 (g) of this title; and

(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552 (1) of this title but may not be retained to the credit of the employee under section 5552 (2) of this title.

(2) (A) An amount payable under paragraph (1)(A)(i) of this subsection shall be payable with interest.

(B) Such interest—

(i) shall be computed for the period beginning on the effective date of the withdrawal or reduction involved and ending on a date not more than 30 days before the date on which payment is made;

(ii) shall be computed at the rate or rates in effect under section 6621(a)(1) of the Internal Revenue Code of 1986 during the period described in clause (i); and

(iii) shall be compounded daily.

(C) Interest under this paragraph shall be paid out of amounts available for payments under paragraph (1) of this subsection.

(3) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

(4) The pay, allowances, or differentials granted under this section for the period for which an unjustified or unwarranted personnel action was in effect shall not exceed that authorized by the applicable law, rule, regulations, or collective bargaining agreement under which the unjustified or unwarranted personnel action is found, except that in no case may pay, allowances, or differentials be granted under this section for a period beginning more than 6 years before the date of the filing of a timely appeal or, absent such filing, the date of the administrative determination.

(5) For the purpose of this subsection, “grievance” and “collective bargaining agreement” have the meanings set forth in section 7103 of this title and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980, “unfair labor practice” means an unfair labor practice described in section 7116 of this title and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980, and “personnel action” includes the omission or failure to take an action or confer a benefit.

(c) The Office of Personnel Management shall prescribe regulations to carry out this section. However, the regulations are not applicable to the Tennessee Valley Authority and its employees, or to the agencies specified in subsection (a)(2) of this section.

SECTION 2
OFFICERS & STEWARDS INFORMATIONAL GUIDE

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SKILLS OF A GOOD STEWARD

1. Ability to get the true and complete facts. (Distinguish between fact and opinion)
2. Ability to distinguish between grievance and gripe and to evaluate the grievance.
3. Ability to discuss and argue grievances logically, persuasively and calmly.
4. Ability to be a good listener and a keen observer.
5. Ability to write grievances - clearly, concisely, and completely.
6. Ability to be diplomatic, fair and objective.
7. Ability to take a stand with management or fellow workers.
8. Ability to keep your word.
9. Ability to gain the respect of management.
10. Ability to resolve grievances at the lowest level and in the shortest time possible.
11. Ability to provide leadership.

(a) But remember: Leadership does not mean leading people around by the nose telling them what to do.

(b) Leadership does mean MOTIVATING people:

- to STAND on their own two feet
- to MAKE their own decisions
- to CARRY them out in the best union tradition

(c) Leadership does mean UNITING people:

- to DISCUSS their problems
- to PROPOSE solutions to the problems
- to DETERMINE a consensus
- to ESTABLISH a position reflecting that consensus
- to STIMULATE membership participation in establishing that consensus
- to FINALIZE (and formalize) that consensus democratically by majority vote.

(d) Leadership does mean **INSPIRING** other members to back up one another and, of course, back up their official spokesman.

THE GRIEVANCE MACHINERY IN MOTION

Section 7103(a)(9) "grievance" means any complaint--

- (A) by any employee concerning any matter relating to the employment of the employee;
- (B) by any labor organization concerning any matter relating to the employment of any employee; or

(C) by any employee, labor organization, or agency concerning-

(i) the effect or interpretation, or a claim of reach, of a collective bargaining agreement; or

(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment; In determining whether or not you have a grievance, you must consider the following two points:

- Does it violate law, agency regulations or policies or your labor management agreement?
- Has the aggrieved technician been treated unfairly by any management official?

If the answer to either question is yes, you have a valid grievance. The steward must remember that every complaint is not necessarily a grievance. Some grievances emanate from personality conflicts. These arguments between employees are not true grievances, and should not be treated as such. These situations may be resolved through other means. Remember the following:

- Get the full story
- Check the records
- Put it in writing
- Be a good listener
- In your discussion with the supervisor do not get sidetracked
- Present your case on the basis, of fact, not opinion
- Don't trade. Never settle one grievance to get a favorable agreement on another
- If you win your case don't brag about your victory
- Be fair, You expect management to be fair so you be fair also
- Do not interpret the Contract

INVESTIGATING & PRESENTING GRIEVANCES
THOSE FIVE IMPORTANT "W's" IN EVERY GRIEVANCE

WHO - is involved in the grievance? Name(s), addresses, and phone number (for the steward's private use only); service computation date; job description, and shift. (Don't forget the supervisor or other management representatives who make this a grievance.)

WHEN - did the grievance occur? On what day and at what time did the act or omission take place which created the grievance? (Shift, date, and time is needed.) If you don't know or can't recall the exact date or time, state: "On or about."

WHERE - did the grievance occur? Exact location.

WHAT - happened on the grievance? This question tells the story of the grievance. What happened to the, aggrieved and what did the Employer/ Agency do?
Often grievances are not simple and usually involve several things happening at once. In getting the facts, you have to constantly ask yourself, "Do I understand this case? Do I have the facts straight in my mind?" Until you definitely have the story clearly in mind, you should continue, to ask, "What happened?", until it is clear.

WHY - is it a grievance? The answer to this question is that the agency violated Article____ Section_____ of the contract. In outlining the violations, don't be satisfied with a single section of the contract. If more than one section has been violated, the stronger your case will be. This does not mean, of course, that you can throw in any violation at all. You must determine what clauses or practices have been violated and then list them in the grievance.

Don't forget the most important part of your grievance: - **WHAT REMEDY ARE YOU REQUESTING?**
What adjustments are necessary to completely correct the injustice? To "make the grievant whole?" (i.e., to place the grievant in the same position he would have been had not the grievance occurred). What action does the Union want management to take? It is very important to be specific in your request for settlement and don't forget retroactivity of the remedy where applicable.

NOTE: A well-written grievance need not be long or complicated. Simply state the situation as concisely and straightforward as you can. Support for your contention can flow from your informal discussion with management Remember, any effort to furnish management with exhaustive details prematurely, may result in something being left out, or even worse, giving away too much of your case.

P.S. Don't forget that inevitable and irrepressible 6th "W" Write it down.

WHERE IS INFORMATION OBTAINED?

1. From the Grievant:

Check your five "W's" first.

Ask the grievant about his previous record

- (a) Quality and quantity of his work
- (b) Previous discipline record (similar or different cases?)
- (c) Attendance record?
- (d) Attitude (has management made this an issue in the past?) Any letters of warning or reprimands on file? If so, the nature and incident of the reprimand.

2. From Other Records:

If records are being requested from the agency, you **MUST** refer to §7114(b)(4) of the Statute when making your request:

- (a) Do chapter records show similar cases in the past? (e.g., settled grievances, arbitration awards, management directives, past practices).
- (b) Check with other stewards on how you might proceed in this case.
- (c) Ask the employee to keep records. (i.e., unavoidable delays spent in wash room, times late, meetings held with supervisor, cases closed, etc.)
- (d) Request from management records or statements. (**First Step:** Have the employee obtain a copy of his NGB Form 904-1 / automated supervisors brief.

3. From Witnesses:

Witnesses can greatly help a grievance, but there are several things to guard against when using them.

- (a) Be certain that you fully understand the witness' story. Go over it with each witness to make sure that they tell the same story each time. This is not a matter of a witness lying as much as people's memories acting in strange ways. Some people remember more clearly than others. Be certain that your witness has a good memory and can repeat his story accurately. And, if possible, obtain a signed statement.
- (b) Be sure that the witness is willing to help you and the grievant all the way through the grievance procedure. A witness might say that he saw what happened but refuses to tell it to management. Make clear to the witness that you are depending on him to support the

case by telling what he knows. You must make him understand that he might be called before management and an arbitrator. It is better not to have a witness than to have one who you depend upon but who later backs down and refuses to testify. It is extremely helpful to have the witness sign a written statement of his story.

SUGGESTIONS FOR PRESENTING THE GRIEVANCE

1. The Problem of Dealing With Human Beings.

(a) No two people are approachable in the same manner. This applies to union members and employer officials alike.

(b) The steward is after results that will benefit the worker and the group as a whole, he must suppress personal likes, dislikes, fears and prejudices.

2. Some Points to Remember When Presenting the Case

(a) Prepare the case beforehand:

- Have your facts down in writing.
- Have notes organized to guide your presentation
- Anticipate the employer's argument and have answers ready.
- Make an effort to talk to the employee alone before you meet with the supervisor.
- Talk the case over, if necessary, with other stewards or others who might help.

(b) Avoid arguments among union representatives in the presence of management:

- If you have a difference of opinion during a meeting, take a recess and discuss the problem out in private - present a united front to the employer.

(c) Keep to the point:

- Avoid getting led off on side issues by management.

(d) Get the main point of management's argument:

- Try to narrow the area of difference between union and management.

(e) Avoid getting excited.

(f) Treat employer representatives as you would want to be treated:

- Let any break in good relations come first from the other side.
- Remember that the management representative to whom you are speaking is not always personally responsible for the complaint or grievance, therefore, you may get less cooperation from him by trying to place the blame on his shoulders.

(g) Avoid unnecessary delays:

- If the employer asks for more time, try to determine whether it is an attempt to stall or is based on a sincere desire for more facts needed to settle the case.
- Remember, the more time that passes, the "cooler" the grievance becomes, and the less support you will get from the worker or workers involved.
- The longer the complaint or grievance is tied up by the employer, the more difficult it will be for the union to gather and remember the facts and merits of the case.
- The more grievances that are piled up in the procedure, the more likely that management will try to "horse trade", that is, settle a few grievances for dropping of others.
- If the grievances are made a part of contract negotiations, management may attempt to trade off other contract demands for settlement of grievances that should have been taken care of previously.

(h) Settle the grievance at the lowest possible step:

- Try to settle the grievance at the first step of the grievance procedure – but make sure it is properly settled.
- This saves time.
- It helps build better relationships.
- The steward will feel like the vital part of the union that he is.
- Don't pass the buck - if you can settle the grievance at the first step, do so.

(i) Avoid bluffing:

- It is only a matter of time until your bluff is called. It is, in the long run, wiser to develop a reputation for honesty.

(j) Maintain your position on a grievance until proven wrong; show me the law, regulations, etc.

(k) Enforce the contract:

- If the union has not complained about similar violations of the contract or past practices before, why should the employer give in now?
- The best contract in the world has no value if the workers and stewards do not require the employer to live up to its terms.

SUMMARY

Your Responsibilities:

As a steward you are a first fine representative of ACT and your chapter. This is a tremendous responsibility; sometimes discouraging, but you have the support and respect of your fellow Association officers and members.

Your Rights:

Under the provisions of your negotiated agreement, and its grievance procedure and the STATUTE, it is your established right to speak freely in protecting the working conditions, as well as the dignity and security of the jobs of all ACT members.

Your Duties:

Be a good ACT member. Understand the principles and provisions of your Association constitution and by-laws. Support your Leadership. Regularly attend local meetings. Understand agency regulations, policies and the provisions of your agreement. Constantly strive to improve ACT- Management relationships. Know your people and their jobs. **Recruit new members.**

STEWARDS CHECKLIST FOR HANDLING GRIEVANCES

1. Know your contract and agency regulations.
2. Know your members and their jobs.
3. Handle problems before they are magnified into grievances
4. Submit only just grievances to management.
5. Get all the facts to support your grievance case.
6. Keep written records of grievances.
7. Settle grievances on the basis of their merits.
8. Maintain a positive, friendly relationship with management.
9. Strive for a satisfactory settlement in the first stage of the grievance procedure. Failing that, follow through to an acceptable decision
10. Keep grievant informed as to the progress of their grievance

TIPS FOR HANDLING GRIEVANCES

1. Determine whether or not a grievance exists:

- Listen carefully - get all the facts and make notes.
- Don't jump to conclusions - personally investigate the complaint conditions.
- Find the cause and determine if management is at fault.
- Be fair and honest. If a grievance does not exist, turn it down.
- Contact your Chapter President / Field Rep for advice.

2. Prepare the grievance properly:

- Print or typewrite your facts in proper grievance form.
- Remember your five "W's" - who is involved, what happened, when did it happen, where did it happen, why is it a grievance, & include the appropriate remedy.
- Monitor contractual time limits

3. Approach the supervisor in a friendly but positive manner.

- State your case briefly and clearly.
- Be calm and attentive.
- Presenting grievances for adjustment is your right and responsibility, do it with confidence.
- Make management justify its position.
- Make every grievance stand on its own merits.
- Persuade the supervisor to settle on the spot.
- If you reach a favorable settlement, thank him and don't brag about it.
- If no settlement is reached, pass the grievance together with all facts to the next step of the grievance procedure without delay.
- Keep the aggrieved employee informed of the exact status of his grievance.
- Contact your National Field Representative for advice.

EXAMPLE

CHAPTER GRIEVANCE FORM

1. GRIEVANT(s) NAME: _____

2. Grievance step _____

3. Unit / Work Site: _____ 4. Duty Phone: _____

5. Position(s) Occupied: _____

6. Representative's Name & Duty Phone: _____

7. Grievance Addressed to: _____

8. **BACKGROUND AND NATURE OF GRIEVANCE:** State section of LMRA or other regulation allegedly violated; indicate names, dates, times, places, phone numbers, etc., where applicable; attach supporting documents, if appropriate; be as clear but brief as possible; if necessary, continue on back or attach paper to this form.

9. Grievance Remedy: _____

10. Signature of Grievant(s): _____ Date: _____

11. Signature of Representative: _____ Date: _____

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SECTION 3
WEINGARTEN RIGHTS & BROOKHAVEN DOCTRINE

WEINGARTEN RIGHTS

(The Rights of Employees to Union Representation)

Employees have the right to union representation during investigatory interviews by management. These are called "Weingarten Rights."

An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for disciplining the employee. The employee must have a "reasonable belief" that discipline may result from what he or she says at the interview.

For example, an employee who is questioned about drugs is clearly involved in an investigatory interview and has the right to request union representation.

However, a foreman who takes a worker aside to give instruction on how to do a job is not conducting an investigatory interview. The possibility of discipline resulting from such a meeting is usually remote.

Rule 1. The employee must make a request for union representation either before or during the interview. Employers have no duty to inform workers of their rights, **unless contractually bound**. Workers who fail to request union representation can be questioned at length.

Rule 2. Once an employee makes a request, the employer must choose from among the following three options:

- a. The employer may grant the request meaning that questioning is halted until the union representative arrives and has a chance to consult with the employee.
- b. The employer may deny the request and end the interview immediately.
- c. The employer may give the employee choice of (1). continuing the interview without a representative or (2) discontinuing the interview.

NOTE: If the employer ignores or denies a Weingarten request and continues asking questions, the employer is guilty of an unfair labor practice.

Rule 3. If the employer refuses a request for a union representative, the worker has a right to refuse to answer further questions. The employer may not discipline the employee for insubordination.

Unions should educate their members about the Weingarten rights. The presence of a union steward can be crucial. It can save workers from making foolish statements that may lead to discipline or discharge.

QUESTIONS AND ANSWERS

1. Objective reasons to fear discipline

Q. Since an employee only has a right to union representation when he/she has a "reasonable belief" that discipline may result from the interview, what is a reasonable belief?

A. The employee must be able to point to objective factors that warrant a fear that discipline may result from the interview. These factors include:

- the employee's prior disciplinary record
- the events leading to the interview
- the location of the interview
- management representatives present at the interview
- management's opening words at the interview

The crucial issue is **what is in the employee's mind**. It is immaterial that management is "certain" that no disciplinary action will be taken at the meeting or gives such assurances to the employee.

2. Company obligations to inform workers of rights

Q. Does management have to notify the worker of his or her right to union representation?

A. No! Unlike a police interrogation of a suspected criminal, there is no obligation on an employer's part to notify workers of their rights. This is the union's job.

3. Rights of union stewards during interview

Q. When the union steward arrives, what rights does he or she have to take part in the interview and advise the worker?

A. The steward's rights include the following:

- The supervisor must inform the steward of the subject matter of the interview (ie. "This is a discussion of tardiness, productivity, stealing, etc.).
- The steward must be allowed to speak during the interview.
- The steward can request the supervisor to rephrase or clarify a question so that the worker can understand what is being asked. However, the steward does not have the right to bargain during the interview, or to argue with the supervisor over the purpose of the interview. After a question is asked, the steward can draw the employee aside and advise him or her on how to answer.

If any of these rights are denied, the union should file unfair labor practice charges.

4. Demanding to enter supervisor's office

Q. If I see a worker being interviewed in a supervisor's office, can I demand to be present?

A. Not necessarily. The demand for union representation must come from the employee, not from the union. Unless the worker indicates agreement with your request to be present, the employer can refuse.

5. Interviews of Witnesses

Q. A worker and a supervisor got into a fist fight. If management wants to interview union witnesses, do the witnesses have a right to union representation?

A. Probably not, since they are not the subject of an investigation and the chances of their answers causing them to be disciplined are remote.

6. Threat of greater discipline

Q. An employee was summoned to an interview with his foreman and asked for his steward. In response, the foreman said, "You can request your steward, but if you do, I will have to bring in the plant manager, and you know how temperamental he is. If we can keep it at the level we are at, things will be a lot better for you." Violation?

A. Yes! The foreman is threatening greater discipline to coerce an employee into abandoning his Weingarten rights.

7. Employee refuses to attend meeting

Q. An employee was ordered to go to the security office. He asked if he could have a union representative and was denied. Does he have a right to refuse to go to the office?

A. No. Weingarten rights do not mature until the actual interview begins. The employee must go to the office and make his Weingarten request to the official conducting the interview.

8. Telephone calls from management

Q. A worker called in sick, His foreman called to demand an explanation. Does the worker have to explain?

A. No! Weingarten rights apply to telephone calls from management. If the worker has a reasonable fear of discipline, he can refuse to answer until he had consulted with his steward and arranged for the steward to be present.

9. Steward not on premises

Q. If a worker's steward is not on the premises, can the employer insist that the employee accept the presence of another union representative?

A. Yes! Management does not have to delay an investigation if union representatives are nearby.

10. No union representatives on premises

Q. Suppose no union representatives are at the worksite. Does management have to wait?

A. This depends on the subject of the interview. If the interview concerns absenteeism, there is no need for speed and the employer is expected to wait a few hours or even a day if necessary for a union steward to be present. But if the interview concerns theft or some other pressing circumstance, employers can go ahead with the interview without waiting for a union representative to show up.

11. Request for attorney

Q. Can a worker insist on the presence of the union lawyer or his own private attorney?

A. No.

12. Announcing discipline

Q. A worker was called into her foreman's office. The foreman said, "Doreen, yesterday you were insubordinate to your supervisor. Therefore, we are giving you a one-day suspension." Can we contest this discipline because no steward was present?

A. No! Weingarten rights do not apply when employees are summoned to meetings where employers simply announce previously-decided decisions to impose discipline.

Note: If, however, after announcing the discipline, the employer starts asking question or seeks to have the employee admit guilt, Weingarten rights would apply.

13. Requests to sign warning slips

Q. If a worker is given a warning slip for misconduct, and is asked to sign it, does he have the right to consult his union steward?

A. No. Weingarten rights do not apply because the employer is not questioning the worker, only announcing discipline.

14. Steward's right to representation

Q. Suppose I am called in by my foreman to discuss my "attitude". Do I have the right to a union representative even though I am a steward myself?

A. Yes! You have the right to the presence of another steward or union officer.

15. Walking out of the interview

Q. Suppose a worker's request for a steward is denied. If management continues to ask questions, can the worker walk out of the interview?

A. No! Workers do not have the right to walk out of meetings with management even under these circumstances. The employee can refuse to answer questions, but must wait until he or she is released by management.

16. Searching lockers

Q. Management searched lockers to look for stolen goods. Does a steward have to be present during search?

A. No. Locker searches, car searches, or handbag searches are not investigatory interviews. Employees do not have the right to insist on the presence of a steward during such searches.

17. "Letters of consent"

Q. Management sometimes asks employees to sign "letters of consent" to allow an interview to continue without union representation. Is this legal? Can the employee change his mind after signing?

A. It is not unlawful for management to ask workers to voluntarily sign a "letter of consent". (It would be illegal to force workers to sign the consent.) But even if the letter is signed, a worker has a right to change his or her mind during the interview, and to insist on a union representative as a pre-condition to answering further questions.

18. Offering worker chance to resign

Q. Management called a worker to the personnel department and informed him that he was seen taking government property. They offered him a choice between resigning or being fired. Is this a Weingarten meeting?

A. Yes! The employee is entitled to his union steward because management is not merely announcing already-decided on discipline. The steward is needed to advise the worker on how to answer management's question.

19. Objecting to a particular steward

Q. An employee was involved in a fight with her supervisor. When she was questioned, she asked for my presence (I am her steward). The company said she would have to accept another representative because I was a witness to the fight. Is this legal?

A. No. A worker has the right to the presence of their departmental steward, whether or not the steward was a witness to the incident.

20. Medical examinations

Q. The company is recalling the workers after a layoff. They are insisting on medical examinations for those out of work for three months or more. Can workers demand a steward be present during the examination?

A. No! Medical examinations are not investigations of misconduct. Weingarten does not apply.

Section 7114 Rights
The Weingarten Right

Office of the General Counsel Federal Labor Relations Authority

I. THE WEINGARTEN RIGHT

A. The Statutory Language Section 7114(a)(2)(B) of the Federal Service Labor-Management Relations Statute provides:

" An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at ... any examination of an employee in the unit by a representative of the agency in connection with an investigation if **(i)** the employee reasonably believes that the examination may result in disciplinary action against the employee; and **(ii)** the employee requests representation. "

This section of the Statute is based on NLRB v. Weingarten, 420 U.S. 251 (1975) and is often referred to as the Weingarten right.

B. The Five elements of the Weingarten Right

(1) Examination in Connection with an Investigation.

(a) Entails meetings in which employee questioned regarding own conduct.

Meeting, although termed "counseling session," in which employee questioned about use of abusive language in control tower, FAA, 6 FLRA No. 116 (1981).

Meeting in which employee questioned regarding three day absence: Marine Coq>s Logistics Base, 4 FLRA No. 54 (1980).

Interview in which employee questioned about cash register shortage. Lackland AFB Exchange, 5 FLRA No. 60 (1981).

(b) Applies to request by an employee for Union representation at an examination by an agency representative in connection with a criminal investigation.

Department of the Treasury. Internal Revenue Service. Jacksonville District and Department of the Treasury. Internal Revenue Service. Southeast Regional Office of Inspection, 23 FLRA No. 108 (1986).

(c) May include meeting where employee questioned is not subject of investigation.

Employee questioned after reported complaint from a taxpayer regarding another employee's alleged disclosure of tax information of that taxpayer,

which was in questioned employee's possession. [IRS, 4 FLRA No. 37 \(1980\)](#).

(d) Does not include performance evaluation or counseling meetings. [IRS, 5 FLRA No. 53 \(1982\)](#); [IRS, 8 FLRA No. 72 \(1982\)](#).

However, the right to receive an explanation for substandard performance or conduct does not, under appropriate circumstances, vitiate an employee's right to representation pursuant to Section 7114(a)(2)(B). [Tidewater Virginia Federal Employees Metal Trades Council, 15 FLRA, No. 73 \(1984\)](#).

(e) Does not include meeting where discipline merely announced.

[Wright-Patterson AFB, 9 FLRA No. 117 \(1982\)](#);

[Norfolk Naval Base, Case 14 FLRA No. 97 \(1984\)](#). However, institutions where employee is represented by the Union in the discipline action is given to employee, This is not violation of [Weingarten](#) right, but rather a bypass of the Union.

[438th Air Base Group. McGuire Air Force Base. New Jersey, 28 FLRA No. 145, and 28 FLRA 1112 \(1987\)](#).

(f) Does not include counseling of "remedial" sessions.

[Wright-Patterson AFB. Ohio, 10 FLRA No. 23 \(1982\)](#).

(g) Warning employee where no questions asked is not an examination. Meeting was not designed to ask questions, elicit additional information, have the employee admit his alleged wrongdoing, or explain his conduct. [IRS, 15 FLRA No. 78](#).

(h) Could include non-verbal investigation.

[Dept. of Justice. Bureau of Prisons, 14 FLRA, No. 59](#). Case involving strip search dismissed because employee waived right to representative. But see [Marine Corps](#).

[Barstow](#), Case No. 8-CA-l005, [et al.](#), Report of OGC July 1981 September 1981 (random search of vehicles not examination) .

(i) Monitoring and taping of a telephone conversation between a taxpayer and an agency employee concerning possible wrongdoing on the part of the employee is not an examination.

[IRS. Jacksonville, 23 FLRA, No. 108](#). Also see,

Department of the Treasury. BA TF. Southeast Regional Office. Atlanta. Georgia, [24 FLRA No. 59](#).

(2) Employee in the Bargaining Unit.

An employee is entitled to be represented by the Union that represents the bargaining unit that the employee is in at the time of the interview not at the time of the events giving rise to the interview.

Department of the Navy. Charleston Navy Shipyard. Charleston. South Carolina. et al., [32 FLRA, No. 37](#), [32 FLRA 222](#).

(3) By a Representative of the Agency.

(a) Supervisor of employee. Marine Corps Logistics Base, [4 FLRA 54 \(1980\)](#); FAA, 6 FLRA No. 116 (1981).

(b) Agency's own investigators

Employee questioned by agents of Activity's Office of Management and Integrity. U.S. Customs Service, [5 FLRA No. 41 \(1981\)](#).

Employee questioned by Agency's Internal Security Inspectors from a different geographical and organizational location of Agency. IRS, [4 FLRA No. 37 \(1980\)](#).

(c) Investigators from related activity.

Air Force employee interrogated by Air Force Office of Special Investigations with activity's own investigator present. Community of interest between activity and investigators. Lackland AFB Exchange, supra. See also 9-CA-20308, Dept. of Navy. Naval Weapons Station Concord, Report Of OGC, October 1982 - December 1982.

Agency representative participating in investigatory interview with FBI - joint investigation. Case No. 4-CA20037, NASA, Report of OGC, April 1982- June 1982. But, Secret Service agent not agent of Bureau of Mint, Department of the Treasury. Bureau of the Mont. U.S. Mint. Denver. CO., Case No. 4-CA-876. ADJ Rpt. 9.

Office of Inspector General agent is a representative of the agency within the meaning of §7114(a)(2)(B), U.S. Department of Labor. MSHA, [35FLRA No. 84](#).

Defense Criminal Investigative Service as an organizational component of the Department of Defense was acting as a "representative of the agency" that is DOD, an "agency" within the meaning of section 7114(a)(2)(B). Department of Defense. Defense Criminal Investigative Service: Defense Logistics Agency and Defense Contract Administration Services Region. New

York, [28FLRA No. 150](#), 28 FLRA, 1145. Affirmed sub. nom. Defense Criminal Investigative Service (DCIS) Department of Defense v. FLRA, 855 F.2d 93 (3rd Cir. August 18, 1988).

The degree of supervision exercised by management over investigators is irrelevant when the investigators are employees of the same agency and their purpose when conducting interviews is to solicit information concerning possible misconduct on the part of agency employees in connection with their work. Department of Justice. INS. Border Patrol. El Paso. Texas, [36FLRA No.6](#).

(4) Employee Reasonably Believes Disciplinary Action Against Employee May Result from Examination.

(a) Look to objective factors to determine presence of reasonable belief.

Employee not subject to investigation but responsible for records which were allegedly disclosed in violation of disclosure rules is grounds for reasonable belief of discipline. Inquiry into employee's actual subjective fear of discipline not permitted. IRS, [4FLRA No. 37 \(1980\)](#).

Employee told that employee was suspected of possible cash register manipulation and was to be questioned by OSI agent on it. Reasonable belief found. Lackland AFB Exchange, supra.

Grant of immunity may eliminate reasonable fear of discipline. INS. San Diego. CA, [15FLRA No. 80](#). The Court of appeals for the District of Columbia Circuit Overturned decision of Authority in 15 FLRA No. 80 finding that the record evidence failed to support the conclusion adopted by the Authority that the employee could not have reasonably believed that disciplinary action might result. American Federation of Government Employees. Local 2544 v. FLRA, 779 F.2d 719 (D.C. Cir. 1985). See decision on remand of case [21FLRA No. 33](#).

(b) Labeling meeting a "counseling session" or "inquiry" does not necessarily remove meeting from statutory protection if elements of Weingarten meeting present. Supervisor sought to "counsel" employee on abusive language employee had just used. Underlying circumstances supported employee's belief discipline might result. FAA, supra.

Fire Station chief did not contemplate discipline, but was inquiring into alleged insubordination. Employee aware insubordination can lead to discipline and that Chiefs inquiry was a "serious" matter. "Reasonable belief" was present. Norfolk Naval Base, supra.

(5) Employee Requests Representation. To be valid, a request need not be made in a

specific form. Instead, a request for union representation must be sufficient to put the respondent on notice of the employee's desire for representation. Norfolk Naval Shipyard, Portsmouth, V A, 35FLRA No. 116.

(a) Request made at meeting to person conducting examination. Employee asked Supervisor at meeting for representation if supervisor was contemplating any action harmful to her. MCLB, supra.

Employee made request of investigator. INS, 4 FLRA No. 37 (1980).
Request of one management official prior to start of interview sufficient. Norfolk Naval Shipyard, 14FLRA No. 19.

(b) Request need not be made of person asking questions if made by other responsible agents.

On way to security office, employee asked Activity's detective for representative; the detective said no because he was not going to question employee. Employee asked the detective again at the security office. Later employee asked manager in office who did not respond. Still later employee asked second detective who did not respond. Employee is not ask OSI agent because felt futile. Both detectives briefed OSI agent before examination by OSI agent and one was present at exam. Lackland AFB Exchange, supra. Request of one management official prior to start of interview sufficient. Need not be repeated. Norfolk Naval Shipyard, supra.

(c) Union representative can make request to be present on behalf of employee. U.S. Customs Service, supra.

(d) request is sufficiently specific - "counselor" specific enough., Appeals Case No. 2-CA-549 (18-28-81); "Representative" - specific; "Attorney" - not specific.

(6)Waiver of representation.

The Authority will look to objective factors to determine if actions of representatives of management would cause a reasonable person in such circumstances to waive his or her right. Department of Justice. INS. Border Patrol. El Paso. Texas, 36FLRA No.6.

C. Related Considerations

(1) Role of Union Representative in Weingarten Meeting.

(a) Union representative not to sit idly by; can be active in employee's defense. FAA, supra.

(b) Though meeting not meant to become adversarial, union representative can comment

form of questions, help employee express view, seek clarifications, and suggest other avenues of inquiry. Placing unwarranted restrictions may be tantamount to failure to allow representation. U.S. Customs Service, supra.

Employer may place reasonable limitations on union rep's role to prevent adversary confrontation, but aggressive behavior by management exceeding reasonable bounds interferes with right to representation. Norfolk Naval Shipyard, 9FLRA No. 55 (1982).

(c) Discipline of union representative for attempting to effectively assist employee is unfair labor practice. FAA, supra.

(d) Preventing union representative from actively representing employee at meeting denies employee Weingarten right and is an unfair labor practice. FAA, supra.

(e) Discipline of employee for insisting on presence of union representative (where all elements of the Weingarten right are present) is an unfair labor practice. Norfolk Naval Base, supra.

(f) Refusal to permit attorney to act as Union's designated representative in Weingarten meeting is violation. Individuals who were being investigated could not serve as representatives of other employees being investigated until their own investigations had been completed. Federal Prison System. Federal Correctional Institution. Petersburg VA, 25FLRA No. 16.

(2) Options of employer and employee faced with Weingarten Meeting (where all elements are present):

The employer may refuse union representation and carry on the investigation without interviewing the employee. The employee must be given the choice between having an interview unaccompanied by a union representative and not having an interview (thereby foregoing any benefit that might be derived from one). Wright Patterson AFB, 9FLRA NO. 117; United States Department of Justice. Bureau of Prisons. Metropolitan Correctional Center. New York. New York, 27FLRA No. 97. Also see, Department of Justice. Immigration and Naturalization Service. Border Patrol. El Paso. Texas v. FLRA, 939 F.2d 1170, U.S. Court of Appeals, Fifth Circuit August 26, 1991 upholding management's right to offer an employee these choices.

Where employee fails to bring representative after meeting postpones several times to allow him to obtain one, no violation. Department of Labor. Employment Standards Administration, 13FLRA No. 35; agency found to have taken "every reasonable step" to provide opportunity for representation.

(3) Remedy for Violation:

In United States Department of Justice. Bureau of Prisons. Safford. Arizona, [35FLRA No. 56](#) the Authority examined the issue of an appropriate remedy for Agency's violation of an employee's right to union representation during an investigatory interview. The Authority ordered the agency, upon request of the union and the employee, to repeat the interview affording the employee full representation rights, and then reconsider the disciplinary action. The Authority further concluded that if, on reconsideration, the agency mitigates the discipline, the employee will be made whole for any losses suffered to the extent consistent with the decision on reconsideration. In Department of Justice. INS. Border Patrol. El Paso. Texas, [36FLRA No. 6](#), the Authority went on to hold that respondent will notify the employee of the results of the reconsideration, including what make-whole actions are to be afforded the employee and, if relevant, afford the employee any grievance or appeal rights that may exist under the parties' negotiated agreement, law or regulation with respect to respondent's action reconsidering the disciplinary action.

EXPLANATION OF FORMAL DISCUSSION / WORKING CONDITIONS

Definition:

Section 7114(a)(2)(A) of the Statute provides: "An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

Elements of a Formal Discussion:

In order to find that a meeting constitutes a "formal discussion" under Sec. 7114(a)(2)(A) of the Statute, it must be shown that:

- (1) there is a discussion;
- (2) which is formal;
- (3) between one or more representatives of the agency and one or more unit employees or their representatives;
- (4) concerning any grievance or any personnel policy or practice or other general condition of employment.

Department of Veterans Affairs VA Medical Gainesville Florida [49FLRA No. 112](#), 49 FLRA 1173 1174 1994. Veterans Administration Washington, D.C. and VA Medical Center, Brockton Division Brockton Massachusetts [37FLRA No. 60](#), 37 FLRA 794 (1990). In examining these elements the Authority has held it will be guided by the intent and purpose of Sec. 7114 (a)(2)(A) to provide the union with an opportunity to safeguard its interests and the interests of bargaining unit employees - viewed in the context of the union's full range of responsibilities under the Statute.

What is a discussion?

Congress intended the term "discussion" to be synonymous with "meeting." Meeting held for purpose of making statement or announcement and not to engender dialogue if otherwise formal is a formal discussion. Absence of active dialogue may not be relied upon to justify failure to give notice of formal discussion. Kelly Air Force Base. [15FLRA No. 111](#), 15 FLRA 529 (1984). It is not necessary that a debate or argument take place before a meeting may be deemed a formal discussion, nor is it a prerequisite that a dialogue occur between management and employees during a meeting. Department of Defense. National Guard Texas Adjutant General's Department 149th TAC Fighter Group (ANG) (TAC) Kelly Air Force Base [15FLRA 529](#). A meeting to announce a unilateral change which did not meet requirements for formality is not a formal discussion. Defense Logistics Agency Tracy, California. [14FLRA No. 78](#), 14FLRA 475 (1984).

Brief discussion with two employees in work place. and brief employee initiated impromptu discussion concerning hours of work. not formal. Social Security Administration, San Francisco, California. [9FLRA No. 9](#), [9 FLRA 48 \(1982\)](#).

Discussion over telephone if it otherwise is formal can qualify as a formal discussion. Sacramento air Logistics Center. McClelland Air Force Base. Sacramento. California. [35FLRA No. 68](#), 35 FLRA 594 (1990).

Whether or not a meeting concerns a "personnel policy or practice" when it begins can later develop into a discussion concerning a "personnel policy or practice" within the meaning of Sec. 7114 (a)(2)(A) that concerns a general working condition. Meeting may become a formal discussion even if it did not start out to be. U.S. Department of Defense. Defense Logistics Agency. Defense Depot Tracy, California [37FLRA No. 80](#), 37 FLRA 952, 960 (1990).

Orientation meetings held to be discussions within the meaning of Sec. 7114 (a)(2)(A) because conditions of employment were discussed. Defense Logistics Agency. Defense Depot Tracy. Tracy. California. [39FLRA No. 86](#), 39 FLRA 999, 1031 (1991).

Orientation sessions with employees to discuss working conditions with questions and answers taking place at such meetings have been held to be discussions under Sec. 7114(a)(2)(A). Department of Health and Human Services. Social Security Administration. [16FLRA No. 32](#), 16 FLRA 232 (1984).

Brief, spontaneous or impromptu meeting not held to be a formal discussion because there was no advance planning no agenda and meeting was short. Veterans Administration Washington D.C. and VA Medical Center Brockton Division. Brockton. Massachusetts. [37FLRA No. 60](#), 37 FLRA 747, 751 (1990).

Requirements of formality - discussion must be formal

Discussion must be formal within meaning of Sec. 7114(a)(2)(A) of Statute for there to be an obligation to notify union. Social Security Administration. [10FLRA No. 24](#), 10 FLRA 115, (1982); Social Security Administration [10FLRA No. 25](#), 10 FLRA 120 (1982); and. Social Security Administration. [10FLRA No. 36](#), 10 FLRA 172 (1982).

Elements of formality:

1. Whether individual holding discussion is first-level supervisor or higher in hierarchy.
2. Presence of other management representatives.
3. Where meeting took place (employee desk or supervisors office)
4. How long meetings lasted
5. How meeting were called (spontaneous or formal notice).
6. Formal agenda established
7. Attendance mandatory.
8. Manner in which meetings conducted (whether notes taken)

Department of Health and Human Services. Social Security Administration Bureau of Field Operations, San Francisco. California 10 FLRA 115 (1982). Thus in determining formality, the Authority will consider the totality of the circumstances presented Defense Logistics Agency. Defense Depot Tracy, Tracy California. 14FLRA No. 78, 14 FLRA 475,477 (1984). See generally National Treasury Employees Union v774 F.2D 1181, 1189-91 (D.C. Cir. 1985). See. e.g.. Veterans Administration Medical Center. Long Beach: California.41 FLRA No. 106,41 FLRA 1370,1380(1991);

A discussion can be formal in the absence of a specific pre-established agenda. Department of the Air Force. Sacramento Air Logistics Center. McClellan Air Force Base. California. 35FLRA No. 68, 35 FLRA 594, 604 (1990).

c. Between one or more employees and one or more agency representatives.

Intra-management discussions or discussions between unit employees only, not formal discussion.

d. Subject matter of meeting must concern grievances, personnel policies, practices, or working conditions.

1. Discussion concerning grievances

a. A meeting which meets the requirements for formality with a unit employee concerning the employee's grievance is a formal discussion. Social Security Administration. Baltimore 18FLRA No. 33, 18 FLRA 249 (1985).

b. EEO meetings occurring at the informal precomplaint counseling stage have been held not to be formal discussions within the meaning of the Statute.

See. Internal Revenue Service. Fresno Service Center. Fresno. California v. FLRA 706 F.2d 1019 (9th Cir.1983) reversing the Authority's decision in Internal Revenue Service Center. Fresno. California. 7FLRA No. 54, 7 FLRA 371. (1981). However, See. Social Security Administration. SSA Field Operations. 16FLRA No. 135, 16 FLRA 1021, (1984) where postcomplaint formal stage BEO meetings may be formal discussions.

c. A grievance within the meaning of Sec.7114(a)(2)(A) can encompass statutory appeal. U.S. Department of Justice. Bureau of Prisons. Federal Correctional Institution.. (Ray Brook New York), 29FLRA No. 5, 29 FLRA 584 (1987), aff'd sub nom. American Federation of Government Employees. Local 3882 v. FLRA, 865 F.2d 1283 (D.C. Cir. 1989). An BEO complaint meets the definition of "grievance" within the broad definition of that term in Sec.7114(a)(2)(A), Nuclear Regulatory Commission. 29FLRA No. 57,29 FLRA 660 (1987).

d.interviews of unit employees in preparation for proceedings before a third-party neutral can be formal discussions, e.g., arbitration, unfair labor practice or preparation for MSPB hearings. Veterans Administration Medical Center. 41FLRA 1370, 1379 (1991), enf.d sub nom. The Department of Veterans Medical Center Long Beach California v.16 F.3d 1526

(9th Cir. 1994); United States Immigration and Naturalization Service United States Border Patrol. El Paso. Texas.47FLRA 170,183 (1993). Department of the Air Force. Sacramento Air Logistics Center. McClellan Air Force Base. Sacramento. California. 29 FLRA No. 53, 29 FLRA 594 (1987). Also see, Department of Air Force. F.E. Warren Air Force Base. Cheyenne Wyoming 31FLRA No. 35,31 FLRA 541, (1988) interplay of Johnnie's Poultry warnings and formal discussion.

e. Gathering facts from unit employees (other than grievant) as part of agency investigation of a grievance prior to preparation for actual hearing may not be considered a formal discussion. Department of Health and Human Services. Social Security Administration 18FLRA No.7, 18 FLRA 42 (1985).

2. Discussions concerning personnel policies, practices and matters affecting working conditions.

a. Discussion of dress code. U.S.Customs. 18FLRA No. 27, 18 FLRA 195 (1985).

b. Quality Circle meetings .Defense Logistics Agency Tracy, California. Case No. 9-CA-20241; AU Report No. 95.

c. Substantial change in job duties involving safety issues. Norfolk Naval Shipyard Norfolk. Virginia. 6FLRA No, 22, 6 FLRA 74 (1981).

d. Orientation of new employees. Health and Human Services. Atlanta. Georgia. 5FLRA No.58, 5 FLRA 458 (1981). Health and Human Services. Social Security Administration. 16FLRA No. 33, 16 FLRA 248 (1984). Orientation session for one employee may not be formal discussion. Department of Health and Human Services. Social Security Administration and Social Security Field Operations. Region II, 29 FLRA No. 89.

e. Reorganization-Bureau of Engraving and Printing. Case No. 3-CA2704, AU Report No. 25.

f. Interview of employees in connection with study analyzing Group Manager's duties, where employee views sought on training, concerns, time constraints, duties, etc. Internal Revenue Service. II FLRA No. 23, 11 FLRA 69 (1983), (but not a by-pass). Not necessary to find a change in working conditions, personnel, policies or practices. Social Security Administration. Northwestern Program Service Center: 1 FLRA No. 88, 1 FLRA 779 (1979).

3. But Not:

a. Discussion of problems personal to employees, without ramifications for other employees. Norfolk Naval Shipyard. IFLRA No. 32, 1 FLRA 233 (1979), also Environmental Protection Agency. 8FLRA No. 98, 8 FLRA 471 (1982). Must involve conditions of employment affecting employment in the unit generally. National Council of SSA field Operations Locals. 17FLRA No. 121. American Federation of Government Employees Council 214, 38FLRA No. 34,38 FLRA 309,330, (1990).

b. Grievance filed under agency grievance procedures, San Antonio Air Force Station. Case No. 6-CA-732, AU Report No. 1.

c. Job performance discussion. Hanscom AFB. Massachusetts. 1FLRA No. 25, 1 FLRA 195 (1979).

d. Meeting to discuss performance evaluation. Internal Revenue Service. Detroit Mich if Yin 5FLRA No. 53, 5 FLRA 421 (1981).

e. Quarterly evaluation sessions to discuss employee performance and to set work-related goals. Social Security Administration. 14FLRA No.5, 14 FLRA 28 (1984).

e. Opportunity to be represented

1. Exclusive representation entitled to prior notice of formal discussions as to allow it to designate its own representative. Actual representation at formal discussions is not sufficient Department of the Air Force Sacramento Air Logistics Center Sacramento California. 29FLRA No. 53, 29 FLRA 594 (1987).

2. Unilateral designation of Union's representative at formal discussion violates Statute. Scott AFB. Case No. 5-CA-1129; 5-CA-1131, ALJ Report No. 13.

3. Management need not postpone or delay meeting unreasonably as long as adequate opportunity to attend is provided Department of Labor Employment Standards Administration. 13FLRA No 35, 13FLRA 164 (1983).

f. Right of Union to participate in meeting.

1. Union representative must be allowed to participate, ask questions, propose resolutions, but is not allowed to disrupt or take over meeting. Internal Revenue Service. Fresno. California. 7FLRA No. 54, 7 FLRA 371 (1981).

2. The language in See. 7114(a)(2)(A) of the Statute that the "exclusive representative...shall be given the opportunity to be represented" at a formal discussion means more than merely a right to be present. It also means that a Union representative has a right to comment, speak and make statements...this 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 that there be respect for orderly procedures and that the comments be related to the subject matter addressed by the agency representatives at the meeting. U.S. Nuclear Regulatory Commission and National Treasury Employees Union. 21FLRA No. 96, 21 FLRA 765 (1986). Also see, U.S. Department of the Army. New Cumberland Army Depot. New Cum~4 Pennsylvania. 38FLRA No. 61, 38 FLRA 671 (1990).

BROOKHAVEN DOCTRINE

Under its Brookhaven doctrine, the Authority requires that when management interviews employees "to ascertain necessary facts" in preparation for third-party proceeding, it must provide certain safeguards to protect employee rights under section 7102 of the Statute; 9 FLRA at 933.

In Brookhaven, the Authority articulated those safeguards as follows:

(1) Management must inform the employee who is to be questioned of the purpose of the questioning, assure the employee that no reprisal will take place if he or she refuses, and obtain the employee's participation on a voluntary basis;

(2) The questioning must occur in a context which is not coercive in nature; and

(3) The questions must not exceed the scope of the legitimate purpose of the inquiry or otherwise interfere with the employee's statutory rights. *Id.* In *F.E. Warren*, the Authority concluded that the Brookhaven assurances need not be applied on a per se basis.

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SECTION 4

(I&I)

IMPACT & IMPLEMENTATION BARGAINING

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APPROPRIATE BARGAINING

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THREE PROCEDURAL FAILURES WHEN DEALING WITH APPROPRIATE BARGAINING

&

THE RIGHT TO INFORMATION (DATA)

&

PRIVACY ACT AND DISCLOSURE OF INFORMATION

&

FLRA SETS STANDARDS ON DISCLOSURE TO UNIONS

IMPACT & IMPLEMENTATION (I&I) BARGAINING PREAMBLE

Although many management decisions may be nonnegotiable, for example, a determination to conduct a reduction in force, the immediate impact or reasonably foreseeable effects of those decisions may be negotiable, for example, the ability of employees who are downgraded to secure consideration for future vacancies at a higher grade.

Impact bargaining obligations may arise by reason of new management directives and policies, or by reason of informal changes in working conditions. ***§7106(b)(2)(3)***

If a nonnegotiable change in working conditions is made by management, the impact must be of some significance before the 1&1 bargaining obligation can be pressed by the union. If the union cannot establish that the changes in working conditions are significant, then the changes are referred to as *de minimus* (minimal) and management will usually decline to bargain the changes with the union.

This is not to say that the union should not proceed with a request to negotiate with management over the changes being made. A management change in the workplace may initially appear to be insignificant or minor in nature, but after some serious thought, research, or discussion with other union members or officials, an entirely different view or picture of the event(s) may materialize.

It is very important to realize, that inaction on your part may constitute a waiver of your rights (union and employees) under the Federal Labor Management Relations Statute (FLMRS). That is why you must take the position that any changes in the workplace may be changes in working conditions. And so, with a minimum of delay, you must provide management, with an oral followed by a formal written request to bargain over whatever changes are being proposed.

Some of the following are situations that require bargaining:

1. Relocation of Work: The reassignment of an employee involves a relocation of work performance and requires impact bargaining. 8FLRA 605 (1982) (Decision of ALJ) [29FLRA 891 \(1987\)](#) (change in where duties would be performed during a period of renovation of facilities.)

2. Contracting Out: Although contracting out itself may not be a negotiable condition of employment, implementation bargaining concerning contracting out is a negotiable matter. [29FLRA 1110 \(1987\)](#).

3. Changes in Duties: A significant addition to the duties of an employee is a change in working conditions warranting notice to the union and impact bargaining, if requested. In fact, there is an obligation to bargain over the impact and implementation of any changes in job duties. [8FLRA 623 \(1982\)](#) (Decision of ALJ).

- A change from one or two day voluntary details to 30-day mandatory details required impact bargaining. [16FLRA 98 \(1984\)](#).

- Assignment of employees to 120-day details, involving different supervisors but essentially the same work, required impact bargaining. There was reasonably foreseeable effect of impact upon performance appraisal and promotional opportunities. [30FLRA 346 \(1987\)](#).

- A change in a program that required increased travel, that some employees welcomed and others avoided, was a change that resulted in more than *de minimus* effect on unit employees and required impact bargaining. [16FLRA 845 \(1984\)](#) (AU Decision).

- Management should have bargained over a decision to assign employee's administrative duties for a month at a time on a rotating basis. [24FLRA 743 \(1986\)](#).

- A study devised and initiated by management for a period of one year in which the possibility existed where changes brought about by the study concerning caseload, office layout/facilities, etc., could become permanent was an appropriate matter for bargaining. [16FLRA 141 \(1984\)](#).

4. Equipment Changes: Changes in equipment used by employees, resulting in reasonably foreseeable safety problems, necessitates impact bargaining. (Installation of a new degreaser) [25FLRA 914 \(1987\)](#).

5. Hours of Work or Shift: A change in duty hours of employees requires impact bargaining. [30FLRA 961 \(1988\)](#)

- Reassignment of employees from one shift to another requires an agency to bargain over impact and implementation. 8FLRA 605 (1982).

- A change in starting or quitting times of unit employees requires impact bargaining. 8FLRA 605 (1982).

- An increase in the number of employees per shift, and enlargement of duties of the positions on the shift requires impact bargaining. [17FLRA 843 \(1985\)](#).

- Although a decision to abolish a tour of duty and assign the employees to another shift was nonnegotiable, the impact of that decision was negotiable. [16FLRA 3 \(1984\)](#).

6. Overtime: Management has the right to change the assignment of work, but it must bargain over the impact first. [9FLRA 762 \(1982\)](#).

- Overtime assignments that have become regular, predictable, and expected by employees, for a period of years, become an established condition of employment and cannot be terminated absent impact bargaining. [9FLRA 762 \(1982\)](#).

- A modification of procedures followed by employees to notify management of their intent to work overtime requires advance notice to the union before implementation and an opportunity for impact bargaining. [19FLRA 136 \(1985\)](#) (AU Decision).

7. Reduction of Employment: An agency decision to change tours of duty from eight to six hours a day, was not in itself negotiable, but the agency was obligated to negotiate the impact of its decision. A *status quo ante remedy* was appropriate absent a showing that agency operations would be unduly disrupted or impaired by not negotiating. [13FLRA 459 \(1983\)](#).

- The agency had an obligation to bargain over its decision to close the day after Thanksgiving and require the use of annual leave, countered by a union proposal to allow use of administrative leave for the day. [21FLRA 814 \(1986\)](#).

8. Breaks: A change in the location of a break area, and the consequential impact on the ability of employees to take their designated breaks, was unlawful in the absence of I&I bargaining. [24FLRA 714 \(1986\)](#).

9. Leave Procedures: A change in the manner of filling out sick or annual leave slips requires bargaining over a change in this practice. [10FLRA 235 \(1982\)](#).

10. Performance Standards & Critical Elements: The impact and implementation of performance standards and critical elements on an employee or employees are negotiable. The union is entitled to notice of the changes and an opportunity to bargain. [14FLRA 390 \(1984\)](#); [16FLRA 1135 \(1984\)](#); [43FLRA 434 \(1991\)](#). This does not mean that the standards or elements themselves are negotiable.

11. Work Review Methods: The establishment of a new means of reviewing work at an office constituted a change in working conditions within management's discretion but required advance notice to the union of the change for the purpose of impact and implementation bargaining. [4FLRA 488 \(1980\)](#) (AU Decision).

12. Training Program Requirements: Changes in the qualification requirements for entry into a training program designed to equip employees to function in a career field required impact bargaining. [17FLRA 254 \(1985\)](#).

13. Upward Mobility Program: An expansion of the size of an upward mobility program, involving more employees, and diminishing the opportunities for selection of those previously eligible, and which would have more than *do minimus* impact on bargaining unit employees, would require impact bargaining. [18FLRA 875 \(1985\)](#).

14. Office Reorganization: Relocation of offices, and, particularly, a change in the allocation of space and facilities to conduct union activities at a new office location, required bargaining as to the impact and implementation. Also, failure to delay implementation in face of other proposals can be an unfair labor practice. [41FLRA 1268 \(1991\)](#).

15. Downgradings; Position Reclassification: Although bargaining proposal directly relating to classification of positions do not concern conditions of employment within the duty to bargain, the duty does extend to implementation of downgradings resulting from reclassification of positions and to the impact of those reclassifications on affected employees. [23FLRA 396 \(1986\)](#)

16. Parking: The impact and implementation of establishing a paid parking program falls within the duty to bargain. [22 FLRA 875 \(1986\)](#). The relocation of a work site where transportation arrangements changed and the allocation of parking spaces for employees required impact bargaining. [25FLRA 843 \(1987\)](#).

APPROPRIATE BARGAINING

The FLRA has stated that: "In order to determine whether a change in conditions of employment requires bargaining .in this and future cases, the. pertinent facts and circumstances presented in each case will be carefully examined. In examining the record, we will place principal emphasis on such general areas of consideration as the nature and extent of the change on conditions of employment of bargaining unit employees. Equitable consideration will also be taken into account in balancing the various interests involved." Dept. of Health & Human Services. Social Security Admin. And AFGE. Local 1760. 24FLRA No. 42 (1986)

The Authority has repeatedly held that "the Statute. requires that, prior to effecting a change in established conditions of employment, an agency must give the exclusive, representative adequate advance notice and an opportunity to negotiate over such change and/or the impact and implementation thereof" See U. S. Dept. of Justice. Federal Prison System. 12FLRA NO.4 at page 10 (1983)

"In this and future cases where the Authority addresses a management allegation that a union proposal of appropriate arrangements is nonnegotiable because it conflicts with management rights described in section 7106 (a) or (b) (1), the Authority will consider whether such an arrangement is appropriate. for negotiation within the, meaning of section 7106 (b) (3) or, whether it is inappropriate because it excessively interferes with the exercise of management's rights.

In making this determination, the Authority will first examine, the. record in each case, to ascertain as a threshold question whether a proposal is in fact intended to be an arrangement for employees adversely affected by management's exercise of its rights. In order to address this threshold question, the union should identify the management right or rights claimed to produce the alleged adverse. effects, the effects or foreseeable effects on employees which flow from the exercise of those rights, and how those effects are. adverse. **In other words, a union must articulate. how employees will be detrimentally affected by management's actions and how the matter proposed for bargaining is intended to address or compensate for the actual or anticipated adverse effects of the exercise of the management right or rights.**

Once the Authority has concluded that a proposal is in fact intended as an arrangement, the Authority will then, determine whether the. arrangement. is appropriate or whether it is inappropriate because it excessively interferes. This will be accomplished, as suggested by the D. C. Circuit, by weighing the. competing practical needs of employees and managers. In balancing these needs, the Authority will consider such factors as:

- (1) What is the nature and extent of the-impact experienced by the-adversely affected employees, that is, what conditions of employment are affected and to what degree?
- (2) To what extent are the circumstances giving rise to the adverse affects within an employee's control?

For example, compare AFGE Local 2782 and Bureau of the Census. 14FLRA 801 (1984), (proposal applies to employees demoted through no fault of their own) with NLRB Union and NLRB, Office. of the. General Counsel. 18FLRA No. 42 (1985) (proposal concerned employees management proposed to demote or terminate due to demonstrated inability or unwillingness to perform acceptably).

(3) What is the nature and extent of the impact on management's ability to deliberate and act pursuant to its statutory rights, that is, what management right is affected; what is the precise limitation imposed by the proposed arrangement on management's exercise of its reserved discretion or to what extent is managerial judgment preserved?

See, for example, A. C. T. Montana Air Chapter and Dept. of the Air Force, Montana Air National Guard, Hqs, 120th Fighter Interceptor Group (ADTAC), 20 FLRA No. 85 (1985) (proposal 1) (proposal which would have precluded management, regardless of circumstances, from obtaining additional personnel with skills unavailable in the unit held to excessively interfere with management rights).

(4) Is the negative impact on management's rights disproportionate to the benefits to be derived from the proposed arrangement?

See, for example, Montana Air National Guard, supra, (proposal 1) (harm to agency's mission balanced against uncertain benefits of the proposal to employees).

(5) What is the effect of the proposal on effective and efficient government operations, that is, what are the benefits or burdens involved?

These considerations are not intended to constitute an all-inclusive list. As frequently noted in the opinions of various judicial and quasi-judicial entities, an adjudicative body must consider the totality of facts and circumstances in each case before it. Additional considerations will be applied where relevant and appropriate. Inasmuch as a ritualistic or mechanistic approach is neither suggested, nor contemplated, the Authority will expect the parties to cases of this nature filed in the future to address any and all relevant considerations as specifically as possible.

IN SIMPLE TERMS THERE ARE FIVE FACTORS OF APPROPRIATE ARRANGEMENTS

1. The nature and extent of the adverse impact of management's decision on workers;
2. The extent to which the adverse effects were within employees' control;
3. The nature and extent of the proposal's impact on management ability to deliberate and act pursuant to management's statutory rights;
4. Whether the proposed arrangement had a negative impact on management rights disproportionate to the benefits to employees;
5. The proposal's effect on effective and efficient government AFGE V. FLRA, 702 F.2d. 1183, 1983.

THREE PROCEDURAL FAILURES WHEN DEALING WITH IMPACT BARGAINING

THE DUTY TO BARGAIN IN GOOD FAITH IMPOSED BY THE STATUTE REQUIRES AN AGENCY TO BARGAIN DURING THE TERM OF A COLLECTIVE BARGAINING AGREEMENT ON NEGOTIABLE UNION PROPOSALS CONCERNING MATTERS WHICH ARE NOT CONTAINED IN THE AGREEMENT, UNLESS THE UNION HAS WAIVED ITS RIGHT TO BARGAIN ABOUT THE SUBJECT MATTER. SUCH A WAIVER MUST BE ESTABLISHED BY (1) AN EXPRESS AGREEMENT, OR (2) THE PARTIES BARGAINING HISTORY. FOR A WAIVER TO BE FOUND, "THAT WAIVER MUST BE CLEAR AND UNMISTAKABLE".

WAIVER:

A waiver *is* described as an agreement between the parties in which one of the parties voluntarily gives up the right to bargain on an issue to which it otherwise would be entitled to negotiate on.

For a Waiver to be enforceable, it must be Clear and unmistakable. To reiterate, the matter must have been fully discussed and consciously explored during negotiations and one of the parties must have yielded or otherwise waived its right to engage in future bargaining about that matter subject.

INACTION:

Is a failure to respond to an announced change before it is implemented, and can result in the loss of the right to negotiate the matter. If the union decides to request bargaining -- or at least request a meeting to determine more information on the issue -- you must do so prior to the announced date of implementation.

ZIPPER CLAUSE:

A written clause in the agreement, which provides for the limitation or bars an obligation to negotiate during the life of the agreement.

THE RIGHT TO DATA

Under 5 U.S.C. 7114 (b)(4) (Federal Labor-Management Relations Statute), agencies have a legal obligation to provide unions (officers and/or shop stewards) with data that the union needs to intelligently carry out its duties as a recognized bargaining agent.

As a union shop steward, you are entitled to information that is needed under the following circumstances:

- to determine whether a grievance exists; or
- to prepare a grievance for presentation to management; or
- to determine whether or not to drop a grievance or to move a grievance forward under the negotiated grievance procedures; or
- to determine whether to arbitrate a grievance; or
- to prepare for an arbitration hearing.

The following are some of the kinds of data you can request:

- personnel files;
- names of witnesses;
- files of particular (Le., specific instances, dates, locations, etc., of alleged unsatisfactory conduct);
- records (such as payroll records, time records, production material, inspection, attendance, time study, security guard records, and supervisor memos.

In discipline cases, the union should demand a complete copy of the employee's personnel records. You may be surprised and find yourself at a distinct disadvantage at an arbitration or disciplinary hearing when management place into evidence past discipline of which you were totally unaware. Also, since unequal punishment is always a potential defense, ask management for a list of workers who have been disciplined for the same type of offense in previous years.

In a contract interpretation case, ask for copies of all notes of collective bargaining sessions concerning the disputed clauses, as well as the dates and contents of any conversations between union and management applying or interpreting the language in dispute.

For other grievances, see sample letters of data request in Section VI:

Although initial requests for information can be made orally, the request must be followed up in writing. Written requests should be as specific as possible. Clearly identify the

records, documents, or facts that you are looking for. Unclear requests, such as for "all documents relating to the incident," do not have to be honored by the employer.

FLRA GENERAL COUNSEL MEMORANDUM TO REGIONAL DIRECTORS ON "INVESTIGATING, DECIDING AND RESOLVING DATA DISPUTES"

This Executive Summary of the Federal Labor Relations Authority's (FLRA) General Counsel's Memorandum to Regional Directors concerns the duty of an agency to furnish information to a union under section 7114(b)(4) of the Federal Service Labor Management Relations Statute (Statute). The memorandum focuses on two recent Authority decisions in this area.

The Memorandum first discusses how unions and agencies can follow the new approaches set forth in these cases for resolving information questions, and includes sample request and response forms for use by labor and management. The Memorandum also provides guidance on how Regional Directors can help unions and agencies, and how unions and agencies can help themselves, in narrowing and resolving disputes over requests for information, without engaging in time consuming and costly litigation. Also attached to the memorandum is a sample issue analysis form to assist the parties in resolving their information dispute prior to filing an unfair labor practice charge.

I.

ESTABLISHING THAT THE REQUESTED DATA IS "NECESSARY"

The Authority decision in Internal Revenue Service. Washington. D.C. and Internal Revenue Service. Kansas City Service Center. Kansas City. Missouri, 50FLRA No. 86, 50FLRA 661 (1995) discussed the parties' obligation to communicate and articulate their respective interests in disclosing information, and set forth a new approach to determining whether information is "necessary" under section 7114(b)(4) of the Statute. The case addressed: (1) what unions must show to establish their need for information; (2) what agencies must show to establish any interests they may have against providing the requested information; (3) what both parties must communicate to each other; and (4) when an unfair labor practice will be found to occur. Each of these matters are discussed in turn.

Q #1: WHAT MUST A UNION ESTABLISH TO CREATE A SUFFICIENT REQUEST FOR DATA?

Particularized Need in General. A union requesting information under section 7114(b) of the Statute must now establish a "particularized need" for the requested information. This requires more than a conclusory or bare assertion that the information is or would be relevant or useful. Rather, the union's request for information must, at the time the request is made, articulate and explain the union's interests in disclosure of the information. This articulation by the union must be sufficient to permit an agency to make a reasoned judgment as to whether the information must be disclosed under the Statute.

How to Show Particularized Need: To create a sufficient request for information, which triggers the agency's duty to disclose information if the other elements of section 7114(b)(4) also have been met, a union must articulate, with specificity, at the time it makes the request:

1. Why the union needs the requested information;
2. How the union will use the requested information;
3. How the articulated use of the Data relates to the unions representational responsibilities under the Statute.

A union must also respond properly to any agency request for further clarification concerning the union's need for the information, without requiring the union to reveal its strategies or compromising the identity of a potential grievant who wishes anonymity.

Personal Identifiers: The requirement for "particularized need" applies to not only the information requested, but to personal identifiers contained in the requested information as well. These include, for example: name, social security numbers or other information identifying a particular employees. To date, the Authority has rarely found that a union has shown the "particularized need" necessary to entitle it to information containing personal identifiers.

Q #2: WHAT MUST THE AGENCY ESTABLISH WHEN REFUSING TO DISCLOSE THE INFORMATION?

To avoid an unfair labor practice, an agency denying a request for information under section 7114(b)(4) because it asserts that the information is not necessary must establish its countervailing anti-disclosure interest. Like a union, an agency does not satisfy its burden by merely making conclusory or bare assertions. An agency cannot simply say "no", but rather must:

1. Assert a countervailing anti-disclosure interest;
2. Establish its anti-disclosure interest.

Similarly, if an agency refuses to disclose information asserting that some other requirement of section 7114(b)(4) has not been met, the agency must establish that reason. An agency's failure to communicate and articulate to the union any countervailing anti-disclosure interests or other reasons for not disclosing requested information constitutes a failure to bargain in good faith and an independent unfair labor practice. See Q #4 below.

Q #3: WHAT MUST BOTH THE AGENCY AND UNION DISCUSS?

In addition to the above, the agency and union are also expected to discuss the following when determining whether and/or how disclosure of the information is required:

1. Alternative forms or means of disclosure that may satisfy the unions' need for the information; and
2. Alternative forms or means of disclosure that satisfy the agencies' countervailing anti-disclosure interest.

Q #4: WHEN WILL AN UNFAIR LABOR PRACTICE BE FOUND?

If the parties are unable to agree on whether or to what extent the requested information will be provided, and the other requirements in section 7114(b)(4) have been met, an unfair labor practice will be found if:

1. The union has established a particularized need for the information; and
2. The agency has not established a countervailing interest in non-disclosure; or
3. The agency's established countervailing interest does not outweigh the unions demonstration of a particularized need.

An agency's refusal to properly respond to a data request by failing to communicate and articulate to the union its reasons for denying the disclosure of requested information constitutes a refusal to bargain in good faith in violation of the Statute, even if disclosure is not required under section 71 14(b)(4).

II.

THE PRIVACY ACT AND DISCLOSURE OF INFORMATION

The second recent Authority decision concerned the relationship between section 7114(b) of the Statute, the Privacy Act and the Freedom of Information Act (FOIA). U. S. Department of Transportation, Federal Aviation Administration, New York Tracon, Westbury. New York 50 FLRA No. 55, 50 FLRA 338 (1995).

Q #5: WHAT MUST THE AGENCY SHOW TO PROPERLY ASSERT THAT THE PRIVACY ACT BARS DISCLOSURE OF THE REQUESTED INFORMATION?

An agency asserting that the Privacy Act bars disclosure of the requested information is required to demonstrate:

1. That the information sought is contained in a "system of records" within the meaning of the Privacy Act;
2. That disclosure of the information would implicate employee privacy interests;
3. The nature and significance of those privacy interests.

Q #6: WHAT MUST THE UNION THEN SHOW TO ESTABLISH THAT THE DATA IS WITHIN EXEMPTION OF THE FOIA AND THUS IS AN EXCEPTION TO THE PRIVACY ACT?

If the agency makes its requisite showing, the union must then establish:

1. That there is a public interest in the requested information cognizable under the FOIA;
2. How disclosure of the specific information will serve that public interest;
3. That the information *is* covered by a "routine use". See Q #8

Definition of Public Interest: The only relevant "public interest" to be considered under the FOIA is the extent to which the requested disclosure would shed light on the agency's performance of its statutory duties, or otherwise inform citizens concerning the activities of the Government. The public interest in collective bargaining that is embodied in the Statute, or specific to a union in fulfilling its obligations under the Statute, will no longer be considered in analyzing the application of Exemption 6 of the FOIA.

Personal Identifiers: The Authority rarely finds any support to establish that the release of personal identifiers enhances any public interest. Rather, the Authority consistently has found that the public interest that would be served by disclosure of requested information containing personal identifiers also could be substantially, if not equally, served by the disclosure of sanitized information which does not identify individual employees by name or other identifying information.

Q #7: WHAT HAPPENS WHEN BOTH THE AGENCY AND THE UNION MEET THEIR

REQUIRED SHOWINGS?

Once the agency and union establish their respective interests, then:

1. The privacy interests of the employees against disclosure must be balanced against the public interest in disclosure.
2. If the privacy interests are greater than the public interest, the agency is not required to furnish the requested information because it is prohibited by the Privacy Act (unless another exception to the Privacy Act applies-see Q #8 below)
3. If the public interest in disclosure is greater than the privacy interests, disclosure of the information is not prohibited by the Privacy Act and the agency is required to furnish the requested information (assuming, of course, that the other requirements in section 7114(b)(4) are met.)

Q #8: WHAT IF THE REQUESTED INFORMATION IS COVERED BY THE ROUTINE USE EXCEPTION TO THE PRIVACY ACT?

The above exception pertains to the interplay between Exemption 6 of the FOLA and the Privacy Act. Another Privacy Act exception that may require disclosure of the information concerns the "routine use" exception of the Privacy Act. OPM/GOVT-2 is a system of records under the Privacy Act which covers many personnel related matters. Requested information in this system of records may be disclosed if the information is determined to be Relevant and necessary within the meaning of OPM routine use "e". This routine use requires a showing that the information bears a traceable, logical and significant connection to the purpose to be served and that there are no adequate alternative means or sources for satisfying the union's informational needs, such as deletion of personal identifiers. Note that this is a different standard than whether there is a "particularized need" for the information under section 7114(b)(4) of the Statute.

III.

RESOLVING DISPUTES OVER THE DISCLOSURE OF INFORMATION

Q #9: HOW CAN REGIONAL DIRECTORS ASSIST THE PARTIES IN RESOLVING INFORMATION DISPUTES?

Interest Based Approach To Resolve Particularized Need Disputes: The Regions should assist the parties in communicating their respective interests and in seeking ways in which those competing interests may be accommodated in a timely manner. The articulation and exchange of interests allows the parties to act in good faith and in a reasonable manner to resolve disputes over the disclosure of information, rather than leading the parties into an adversarial and litigious relationship. The parties are encouraged and expected to consider alternative forms or means of disclosure that satisfy both a union's information needs and an agency's countervailing anti-disclosure interests.

To assist the parties to resolve their information dispute after a charge has been filed, the Regions initially should assist the parties in identifying the particular information which is the subject of the disputed request. Often, the parties do not have the same common understanding of exactly what information is subject to the request. The Regions should then

assist the union in articulating exactly why it has requested the information, and the agency in articulating why it has denied the request. Again, parties sometimes are in dispute over the disclosure of information because an agency does not understand why the union requested certain information and the union does not understand why the request was denied.

Thus, under an interest based approach, the issue to be resolved is not whether the union has a statutory right to certain information in the format requested, but rather what information does the union require to adequately represent its members and how can that information be furnished to accommodate competing agency anti-disclosure interests and employee privacy interests. To resolve the issue, it is necessary for the parties to work together to articulate and explain those interests; Le., how does the union intend to use the information and what is driving the agency's anti-disclosure interests. The Regions should then assist the parties in brainstorming alternatives as to how the union may obtain the information it requires while accommodating the agency's anti-disclosure interests and protecting any employee privacy interests .

Interest Based Approach To Resolve Privacy Act Disputes: The parties also are encouraged to attempt to accommodate employee privacy interests and the union's interests in disclosure. The Regions should inform the parties that the Authority rarely finds any support to establish that the release of personal identifiers enhances any public interest which has been articulated in the documents. Thus, the Regions should explore the possibilities of sanitizing personal identifiers and coding the documents in a manner that allows for the grouping of the documents by category which does not identify individuals; ~, designation by union membership. Coding the information could allow for later identification of specific individuals if the union requested such identification and established a particularized need. Under this method, any requisite additional information could be obtained in a more targeted way.

Q #10: HOW CAN THE PARTIES USE AN INTEREST BASED APPROACH TO RESOLVE TH INFORMATION DISPUTES PRIOR TO THE FILING AN UNFAIR LABOR PRACTICE CHARGE

The Regions should also encourage the parties to utilize an interest based approach to resolve disputes themselves over information requests prior to the filing of an unfair labor practice charge. The parties may follow these steps in resolving any dispute over the disclosure of information:

1. Identify the particular information which is the subject of the disputed request;
2. The union should articulate exactly why it needs the requested information;
3. The agency should articulate exactly what concerns it has about disclosing the information;
4. The parties should then brainstorm alternatives as to how the union may obtain the information it requires while accommodating the agency's anti-disclosure interests;
5. If the requested information is contained in a system of records under the Privacy Act, the union should explain how disclosure of the requested information, including any personal identifiers and the time period encompassed by the request, would shed light on the agency's performance of its statutory duties or otherwise inform citizens of the activities of the Government;
6. The agency should then explain the employee privacy interests in the information which are behind the agency's concerns in disclosing the information; and
7. If the agency's concerns relate to the identification of particular employees, the parties should jointly explore alternative ways to release the information without those personal identifiers.

FLRA SETS STANDARDS ON DISCLOSURE TO UNIONS

The Federal Labor Relations Authority has outlined a new policy on disclosing agency information to federal unions, saying unions must show a specific need for what they are requesting and telling agencies that they must show a legitimate interest against disclosure to justify denying such a request.

The FLRA said that the requesting union must show why it needs the information, how it will use it and how that is important to its representational duties. Merely saying that the information would be relevant or useful wouldn't be enough. The agency, in turn, cannot merely say no. It would have to cite "countervailing anti-disclosure interests" that must outweigh the union's need, in order to deny the request.

The FLRA also said it expects the two sides to consider alternative forms of disclosure that will satisfy the union's representational needs and the agency's interests in protecting information. [50 FLRA No. 86, \(1995\)](#)

See more detailed information in this section.

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SECTION 5

SAMPLE LETTERS

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NOTES

DECLARATION AUTHORIZING UNION REPRESENTATIVES TO RECEIVE INFORMATION

I, _____, residing at _____
Social Security No. _____, hereby authorize the following listed Labor
Organization Representative(s)

of the Association of Civilian Technicians, to exercise on my behalf, rights established by law, allowing access to information, including any state law, the Federal Freedom of Information Act, and the Federal Privacy Act. I also authorize all state, federal or other government employees or officials [and all hospitals, doctors, and medical personnel **] to deliver records concerning me to any of the ACT officials indicated or other representative and to discuss freely with any ACT Official any matter or information pertaining to me.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ Signature _____
(Date)

** include bracketed words if medical records are relevant.

Received By: _____ Date: _____

CERTIFIED MAIL No. _____

SAMPLE LETTER #1

Date:

CWO Paul O'Connor
(HRO) - (Commander) - (Superintendent) Union Designation or FMS #
Street Address
City or Town, New York

RE: Disciplinary Action - Letter of Reprimand For James H. Hamilton

Dear CWO O'Connor:

In preparation to represent James H. Hamilton in his upcoming administrative hearing relative to the above-captioned matter I am requesting, in accord with 5 U.S.C. 7114 (b)(4), the following data from your office within five (5) workdays from the receipt of this letter. If you cannot provide me with the requested information, please forward this letter to the appropriate official or advise me where it can be obtained:

- a. John Does entire personnel record.
- b. The record of tardiness of all other employees under your supervision for the past three years.
- c. The names of employees within (state) who have been disciplined for tardiness within the past three years, to include the date and description of each discipline; ie; letters of reprimand, suspensions and/or terminations.
- d.

Sincerely,

(Sign Here)

JOHN T. UNION
Shop Steward or Chapter Officer

cf: Field Rep
Chapter President

Received By: _____ Date: _____

CERTIFIED MAIL No.

SAMPLE LETTER #2

Date:

Name/Rank
(HRO)(Commander)(Superintendent)
Street Address, City, State, Zip

RE: Disciplinary Action – Letter of Reprimand for John Q. Public

Dear COL Wannabee;

In preparation to represent John Q. Public in his upcoming administrative hearing relative to the above captioned matter, I am requesting the following information from your office. This information is needed to determine if the letter of reprimand issued to Mr. Public is appropriate in light of his employment history and consistent with discipline of other employee in similar circumstances. If you cannot provide me with the requested information, please forward this letter to the appropriate official or advise me where it can be obtained.

- 1) Jame Q. Publics entire personnel file. Enclosed is Mr. Public’s authorization for you to send me information pertaining to him.

- 2) The record of tardiness of all other employees under your supervision for the past three years, with personal identifiers deleted, but with indication of whether the employee was ever disciplined for tardiness, and if so when, for what tardiness, and what discipline was imposed.

- 3) All records concerning discipline of employees within (your state) who have been disciplined for tardiness within the past three years, to include the date and description of each discipline, ie; letters of reprimand, suspensions or termination.

I request that personal identifiers be deleted from these records but that the records be coded so that all records pertaining to a particular employee and each instance of discipline of that employee can be identified (for example, “Employee #1 – Discipline Imposed on [date])

Sincerely,

(sign here)

JOHN T. UNION
Shop Steward

Cf; Field Rep
Chapter President

Received By: _____ Date: _____

CERTIFIED MAIL No.

**SAMPLE LETTER #3
FOR APPROPRIATE BARGAINING**

Date:

RANK/NAME

TITLE

Combined Support Maintenance Shop or FMS

(STATE) National Guard

Street Address

City, Town, State, Zip

Dear (rank/name)

It has come to our attention that a change of policy is being considered with regard to _____. The changes that we are led to believe will occur, (may or will) impact upon the working conditions of employees within the bargaining unit represented by our organization. As I am sure you are aware, the Statute provides that the Association must be provided with reasonable advance notice and given the opportunity to seek negotiations regarding any changes to working conditions of the employees within our recognized bargaining unit.

This letter will therefore serve as our formal request to you that we wish to negotiate this matter. Under the provisions of 5 U.S.C 7114(b) (4), the Labor Organization hereby requests that it be provided with any and all data relating to the _____ and that the data be forwarded to us within five (5) workdays following your receipt of this letter. The Labor Organization needs this information in order to consider and to prepare proposals addressing whether the change should occur and, if so, its impact. After we receive and have had an opportunity to review all of the materials, we shall arrange to meet and discuss with you proposals concerning the above matter.

Sincerely,

(sign here)

John T. Union

(your position & title)

cf: Field Rep

Chapter President

Received By: _____ Date: _____

CERTIFIED MAIL No. _____

SAMPLE LETTER #4
FOR APPROPRIATE BARGAINING MOST COMMONLY USED REQUEST

Date:

Colonel CWO (name)
Superintendent or Supervisor
Combined Support Maintenance Shop or FMS New York National Guard
(Street Address)
City town and State *Zip* Code

Dear Colonel/CWO

It has come to our attention that a change of policy is being considered with regard to? The changes that we are led to believe will occur, and will impact upon the working conditions of employees within the bargaining unit. As I am sure you know, the Statute provides that the Association must be provided with reasonable advance notice and opportunity to seek negotiations regarding any changes to working conditions of employees within the recognized bargaining unit.

This letter will therefore serve as our formal request to you that we wish to negotiate this matter.

Under the provisions of 5 U.S.C. 7114(b)(4), the Association hereby requests that we be provided with any and all data relating to the _____ and that the data be forwarded to us within five (5) workdays following your receipt of this letter.

After we receive and have had an opportunity to review all of the materials, we shall arrange to meet and discuss with you (or forward proposals to you) concerning the above matter.

Sincerely,

(sign name here)

JOHN T. UNION
Shop Steward

cf: Field Rep
Chapter President

Received By: _____ Date: _____

CERTIFIED MAIL No. _____

**SAMPLE LETTER #5
FOR APPROPRIATE BARGAINING ON REORGANIZATION / RIF**

Date:

RANK, NAME
TITLE (AIR COMMANDER)
YOUR UNIT
STATE, AIR OR ARMY NATIONAL GUARD ADDRESS
CITY, TOWN AND STATE

Dear _

On behalf of the _____ Chapter, Association of Civilian Technicians, the undersigned respectfully requests that you provide us with copies of the Department of the Air Force or Army, National Guard Bureau or your (state) National Guard letters, bulletins, the current and proposed manning documents, etc.. pertinent to the upcoming (RIF/REORG). We request that this data be provided to the Labor Organization within five (5) workdays of your receipt of this request.

The Labor Organization needs this data to monitor the RIF's implementation with respect to compliance with RIF laws and regulations (and thereby to determine if grievances or other challenges to the RIF should be presented), and to prepare proposals addressing the purposed RIF.

This letter also serves as our formal request to commence negotiations with you or your representative from the office of the Adjutant General, concerning the procedures to be followed in carrying out the forthcoming reduction in force.

We propose that no further reduction in force or other personnel changes be implemented until we have had an opportunity to review the materials requested above and until we meet with you and complete bargaining and have concluded a signed agreement pertaining to this important issue.

Sincerely,

(sign name here)

JOHN T. UNION
Shop Steward

cf: Field Rep
Chapter President

Received By: _____ Date: _____

CERTIFIED MAIL No.

**SAMPLE LETTER #6
FOR APPROPRIATE BARGAINING WORK OR SHIFT CHANGES**

Date:

John Pain
(Job Title)
(Org Unit Name)
(Your State) National Guard
(Street Address)
Town, City, State w/zip

Dear Major,

As you know, I wrote you on (date), notifying you of the Associations intent to negotiate over managements decision to establish a second (night) shift on or about (date).

Pending discussions of this matter, the following initial proposals are herewith submitted;

1. The employer will inform the union of the number, types and qualifications of employees that management requires to fulfill the mission assigned to the night shift.
2. It is agreed that volunteers for the night shift assignment will be solicited first from among employees having the required qualifications determined by management.
3. If an insufficient number of volunteers cannot be found, assignment to the night will be made on the basis of seniority. A seniority list of all qualified bargaining unit employees will be prepared by management and a copy of the list provided to the union prior to its use. Assignment to the night shift will then be made from the seniority list with the least senior employees being assigned first. The employer will ensure that the seniority list is kept current.
4. Employees volunteering or involuntarily assigned to the night shift may have a trial period to assess the impact of the change from day to night shift on commuting time or transportation difficulties.
5. After the night shift personnel have been identified and assigned, the employer will prepare and maintain a night shift seniority list, a current copy of which will always be provided to the union.
6. For circumstances covering situations not addressed in other proposals herein, the Employer and Association will enter into discussions to establish criteria for determining whether to grant requests of employees assigned (night shift)to switch from day and night shift or from night shift to day shift.

7. Vacancies occurring on the regular day shift may be filled by transfer from the night shift if requested by the employee and provided the employee is qualified for the position. If more than one employee desires a shift change, then seniority status will determine who is eligible to change shifts.

8. Night shift employees will maintain the current Alternate Work Schedule plan unless an involuntarily assigned employee can show an adverse impact on family members resulting from unattended children, inability to care for a sick family member, ect.

9. If days off for night shift personnel on AWS will be staggered, the choice of days off will be determined on the basis of seniority.

10. The Association will be given a minimum of fourteen (14) days prior of any intent to continue the night shift beyond the currently projected expiration date.

11. All mutually agreed upon procedures resulting from these discussions will be reduced to a written memorandum of agreement and signed and dated by the responsible union and management officials. Reasonable advance notification and opportunity for negotiations will be provided to the Association relating to any changes to the procedures outlined in the memorandum of agreement.

12. The Association proposes that the effective start date of the night shift be held in abeyance until the conclusion of bargaining over managements decision to establish the night shift. Upon the employers receipt of these proposals, the Association is prepared to immediately meet and discuss them. The Association reserves the right to submit further proposals resulting from the discussions of the above or related matters with the employer.

Sincerely,

(sign here)

JOHN T. UNION
Shop Steward

Cf; Field Rep
Chapter President

Received By: _____ Date: _____

CERTIFIED MAIL No. _____

SAMPLE LETTER #7
FOR APPROPRIATE BARGAINING REORGANIZATION OR AIRCRAFT CONVERSION

Date:

Colonel (Name)
(Your unit Designation) (State) National Guard Address
City town and State

Dear Colonel

This letter follows my earlier letter to you, _____ dated _____, in which I requested certain documents from you in connection with the proposed (reorganization; conversion or reduction-in force) conversion to _____ type aircraft..

Upon review of some of the material(s) we received from you, and following discussions held recently with certain members of your staff, the Association has determined that certain matters need to be addressed immediately. Therefore, we are herewith submitting the following proposals until we have fully completed our review of the documents requested earlier:

1. The Association will be consulted at least five (5) work days prior to any formal meetings by management officials with bargaining unit employees relative to the (conversion; reorganization or RIF).
2. The Chapter (or Council) will be informed and given an opportunity to negotiate the procedures involved relative to the procedures to be followed in transferring employees from one functional work area to another.
3. Employees transferred to another work area will have priority placement rights to return to their original work area(s) when vacant positions become available for which they are qualified.
4. Procedures will be established addressing transferred employees who are unable to achieve appropriate skill levels in their newly assigned positions, i.e. providing them with the ability to retreat to their former positions or one in a previously held occupational family group.
5. Procedures which will be followed by the Employer when hardship situations arise involving employees attending, or scheduled to attend training schools at locations other than (name your facility or base).
6. The Employer and the Association will immediately begin to collect data and other necessary findings relative to determining the possibility of receiving approval for early-out retirements for eligible bargaining unit employees.
7. Offering all available positions within the bargaining unit to bargaining unit employees first. No non-bargaining unit employees will compete with bargaining unit employees for bargaining unit positions.

In closing, the union wishes to advise the Employer that we reserve the right to present further bargaining proposals to you or your designated representative(s) following our receipt and review of all available documents we requested relevant to the conversion..

Sincerely,

(sign name here)

JOHN T. UNION
Shop Steward

cf: Field Rep
Chapter President

Received By: _____ Date: _____

CERTIFIED MAIL No.

SAMPLE LETTER #8
FREEDOM OF INFORMATION REQUEST

Date:

Agency Head or FOIA Officer
Name of Agency
Address of Agency
City, State, Zip Code

RE: Freedom of Information Request

Dear ??,

Under the provisions of the Freedom of Information Act, 5 USC § 552 I request, for each selective retention board held in 1990, 1991, 1992, 1993, 1994 and 1995, records showing;

1. the date the board was held,
2. the number of Army National Guardsmen considered by the board,
3. the number of Army National Guardsmen considered by the board who are or were technicians, "
4. the number of Army National Guardsmen separated by the board,
5. the number of Army National Guardsmen separated by the board who were technicians,
6. the number of Air National Guardsmen considered by the board,
7. the number of Air National Guardsmen considered by the board who are or were technicians,
8. the number of Air National Guardsmen separated by the board,
9. the number of Air National Guardsmen separated by the board who were technicians,
10. any other statistical or narrative information prepared for purposes of reporting the boards actions.

For any year in which no board was held, I request records indicating the decision not to hold a board that year or the reasons for that decision. I request a waiver of all fees for this request. Disclosure of this information to me is needed to assess the nature and scope of any adverse impact on civilian technicians as a direct result of actions taken by the retention board.

Thank you for your consideration in this matter.

Sincerely,

(sign name here)

JOHN T. UNION Shop Steward

cf: Field Rep
Chapter President

Received By: _____ Date: _____

CERTIFIED MAIL No.

“NOTE”

If you are unable to determine the impact of a change in working conditions, you must give a reply stating that:

“At this time the Association cannot determine what impact will affect the bargaining unit employees. However, should there be an impact after the change in working conditions has been implemented; the Association retains its right under the Statute to negotiate the unforeseen impact that had then occurred.”

Take note that the FLRA has ruled that a Union cannot foresee the future regarding all changes in working conditions.

SECTION 6

AREA SHOP STEWARD FLYER

&

CHAPTER MEETING FLYER

&

NGB 904-1

&

APPENDIX OF OWCP FORMS

&

PREPARATION FOR THIRD PARTY PROCEEDING

&

PROBATIONARY EMPLOYEES

Keep The Faith



Duty...Dignity...Dedication

MEMBERS AND PROSPECTIVE MEMBERS

YOUR SHOP STEWARD IN THIS AREA IS:

NAME OF STEWARD: _____

WORK PHONE NUMBER: _____

WORK SITE: _____

AREAS REPRESENTED: _____

SAMPLE
CHAPTER MEETING FLYER



Date: **Thursday: 21 January 2007**
Time: **11:30 till 12:30 hrs**

Place: *Dining Facility*

Lunch will be :
PIZZA

AGENDA / ITEMS OF DISCUSSION:

- Washington Trip
 - Change of Stewards
- And More...

It's important to YOU and your CAREER that you attend

PREPARATION FOR THIRD PARTY PROCEEDING

1. Types: arbitration, administrative hearing, unfair labor practice (ULP).
2. Be prepared to continue to go to any of the above
3. Notify your Field Rep in the beginning and send copies of the file
4. Start to gather you information list, ie; personnel records, regulations, contract language, policy letters, etc:
5. Start a witness list to include as to what they will testify to
6. You send a 7114(b)(4) request for information / data
7. Be sure to have your Field Rep coordinate the date for the hearing with the employers representative and yourself

INTERVIEWING AND PREPARING WITNESSES FOR THE PROPER METHOD OF ANSWERING QUESTIONS BEFORE A THIRD PARTY

The following list of questions and proper responses can be used to prepare a witness who is going to be examined at an administrative hearing.

1. Who shoulders the burden of proof in disciplinary cases? *The Agency.*
2. What is the role or purpose of a witness in a hearing? *To provide data in a clear, factual manner. -- To the extent that this is done, the testimony will be deemed creditable by the hearing examiner.*
3. What is the most common error committed by witnesses? *Failure to give a direct response.*
4. What are the consequences of this kind of behavior? *Hearings are delayed and one's credibility is diluted.*
5. While testifying, what should one say in response to a question which one cannot answer factually? *"I don't know" or "I'm not certain. " -- What you don't know, you don't know. There is no harm in not knowing certain things.*
6. Does the witness "loose face" if he or she admits to not having information or knowledge about a given question? *No. -- In Fact, it helps the witness' credibility.*
7. What happens if a witness attempts to furnish a less than factual piece of testimony? *The witness will very likely lose credibility.*
8. How is the Hearing Examiner likely to regard hesitation by a witness to a question which obviously merits a direct answer? *It may reduce the witness' credibility.*
9. What is likely to happen if, in one's testimony, one gives a windy, extraneous response? *The Hearing Examiner will see through such smoke screens and will begin to have doubts about the witness' credibility.*
10. How valid is testimony from a witness about what he/she or someone else thought? *Hearing Examiners want facts, not hearsay, opinions, thoughts, feelings, beliefs or conclusions .*
11. Is it "legitimate" for the opposing counsel to attempt to dilute or discredit a witness' testimony? *Yes! A witness who is sure of his or her facts should be able to stand a reasonable amount of "harassment" by the opposing counsel.*
12. Should a witness restate a question put to him or her before answering it? *No! It may look to the Hearing Examiner that the witness is stalling for time to figure out a "correct" response. Again, directness is expected in one's testimony.*
13. What should a witness do when a question is posed which may have a possible damaging effect? *Simply give a direct, factual answer.*
14. How should a witness answer to a question which may be hostile, embarrassing or demanding? *Don't rise to the bait! Avoid defensiveness. Keep your cool and answer the question clearly and factually.*

15. Should a witness inform opposing counsel about interviews with his/her counsel if asked?
Yes! *This is an acceptable part of preparation for the hearing.*

16. What is likely to happen if a witness volunteers more information than is requested? *This may provide the opposing counsel with an opportunity to open up a whole new line of attack.*

The above questions are not inclusive of the ones that will be asked in conjunction with the situation/case. As a reminder, all witnesses/potential witnesses must be interviewed before the hearing. The above information regarding interviewing witnesses can be used in all third party hearings. The interview can be conducted by a chapter representative or your national field representative.

PROBATIONARY EMPLOYEES

New employees who receive an initial non-temporary appointment to a Technician position will have a one year trial period. The trial period is the final and highly significant step in the overall evaluation of a Technician. It provides the final indispensable test, that of actual performance on the job, which no preliminary evaluation can approach in making a valid assessment.

During the trail period, the Technician's conduct and performance in the actual duties of his position may be observed, and he/she may be separated from Technician employment without undue formality as circumstances warrant. For management, the trial period properly employed, provides protection against the retention of a Technician who, in spite of having passed any preliminary evaluation, is found in actual practice to be lacking in fitness and capacity to acquire fitness for permanent Government service.

Therefore, a new Technician serving a probationary period will be given a probationary period evaluation by his/her supervisor, no earlier than the beginning of the 9th month nor later than the end of the tenth month of their probationary period. -This evaluation is not considered an official performance appraisal for the purpose of appeal rights. However, even prior to this time period, the probationary employee may be terminated without detailed explanation.

A Technician serving a trial/probationary period will not be given an official performance appraisal until after first completing the required 12 months of Federal Service.

1. If a new employee changes career fields during the probationary period, a new probationary period begins upon assumption of his/her job duties in the new career field.
2. Probationary employees in a bargaining unit position are eligible and may join the Association at any time and have their union dues withheld through payroll deductions.
3. A probationary employee may file a grievance concerning a direct violation of any of the provisions within the negotiated labor-management agreement.
4. When the Employer terminates a probationary employee based on deficiencies in performance or conduct, regulations require only that the Employer notify the employee, in writing, of the reasons for the termination and the effective date of the action.