LABOR RELATIONS

National Guard
Technician Personnel Management Course
Bargaining Unit Exclusions

5 USC 7112(b)

- Supervisory/Management Officials
- Personnel lists (non-clerical)
- Assistants to general labor relations policy officials
- Employees engaged in work affecting national security
- Employees who perform agency investigative or audit activities
- Professional employees in a mixed pro/non-pro unit
Definition of a Supervisor

A supervisor is a person who is authorized, with respect to employees, to do or recommend at least one of the following:

- hire
- transfer
- assign
- recall
- discipline
- promote
- furlough
- remove
- lay-off
- direct employees
- suspend
- reward
- adjust grievances
Duty to Bargain

- Personnel Policies
  - Merit Promotion/Hiring & Reduction In Force (RIF)/Furlough Procedures

- Personnel Practices & Working Conditions
  - Parking assignments, picnics, employee lockers, location of coffee makers and microwave ovens, office space/design, type and placement of office furniture, etc.
Non-Negotiable Management Rights

5 USC 7106(a)

- Determine mission, budget, organization, employee numbers and internal security
- Hire, direct, lay-off and retain employees
- Suspend, remove, reduce (grade/pay) or discipline employees
Non-Negotiable Management Rights

5 USC 7106(a)

- Assign work, contract out and determine which personnel will perform operations that support the organization's mission
- Select and appoint employees
- Take necessary emergency actions
Duty to Bargain

5 USC 7106(b)

Nothing precludes management and the union from “Impact and Implementation” bargaining on:

- **Procedures** which management will observe in exercising its rights
- **Appropriate Arrangements** for employees adversely affected by management in exercising its rights
Content of Labor Agreement

5 USC 7121

Coverage:

- All employee grievances except those excluded by 5 USC 7121 (b) & (c) (no strike/work stoppage provisions) and/or Title 32 USC 709e (NG Technician Act provisions)
- Must provide for final and binding arbitration
- Must provide for settlement of questions or arbitration
Content of Labor Agreement

5 USC 7121

**Coverage (continued):**

- Limits employees to either union or self representation

- Does NOT apply to people excluded from the bargaining unit
Management Unfair Labor Practices (ULP)

under 5 USC 7116(a)

- Interference, restraint or coercion of an employee in the exercise of assured rights
- Encourage or discourage membership in a labor organization by discrimination with respect to conditions of employment
- Sponsor, control or otherwise assist a labor organization
Management Unfair Labor Practices

under 5 USC 7116(a)

- Discipline or discriminate against an employee because the employee has filed a complaint or given testimony under 5 USC 7116
- Refuse to consult/negotiate
- Fail to cooperate in impasse procedures
- Enforce rules or regulations in conflict with a prior collective bargaining agreement
Alternative Dispute Resolution (ADR)

Types of Mechanisms:

- Joint Dispute Resolution Committees
- Internal Agency Third-Party Review
- Facilitation
- Mediation
Alternative Dispute Resolution (ADR)

*Types (continued):*

- Fact-finding
- Advisory Arbitration
- Mediation – Arbitration
- Interest-Based (win-win) Bargaining
ADR Coverage

- Grievances
- EEO cases/issues
- Hearing examiner cases
- Workplace problems
- ANY issue the parties agree to place under ADR

- ULP cases
- Contract interpretation disputes
- Bargaining disputes
Why Use ADR?

- Decrease litigation/resolution costs (money/time/man-power)
- Increase consensual settlements
- Improve relationships
Why Use ADR?

- Decrease formality
- Limit adversarial opportunities
- Facilitate future problem resolution
What is a Formal Discussion?

Under 5 USC 7114(2)(A)

A discussion which is…

- formal in nature,
- between one or more representatives of the agency AND one or more bargaining unit employees or representative, AND
- related to any grievance or any personnel policy or practices or other general conditions of employment
Formal Discussion: Management Obligations

5 USC 7117(d)(2)

- Notify the appropriate union representative of the meeting
- Afford union the opportunity to select its representative and to attend
- Allow the union representative to actively participate at the meeting
No Formal Discussion when/if:

Discussion is about and with an individual employee related to his/her:

- Personal problems
- Job performance
- Performance evaluation
- Oral reply to proposed disciplinary action(s)
- During impromptu meetings on the shop floor
Union Rights When Granted
Exclusive Recognition

Investigating Interviews
The Weingarten Right

(5 USC 7114(a)(2)(B)
Union Rights When Granted
Exclusive Recognition

5 USC 7114

- May negotiate agreements for all employees in the collective bargaining unit
- Responsible for representing the interests of all bargaining unit employees, regardless of membership status
- Must be given the opportunity to be represented at all formal management-employee discussion concerning grievances or other negotiable issues
Union Rights When Granted Exclusive Recognition

5 USC 7114

Must be given the opportunity to be present at any investigative examination of a unit employee, IF the employee…

- Reasonably believes the examination may result in disciplinary action,
  
  **AND**

- Requests representation
Use of Official Time

5 USC 7131

- Internal union business shall be conducted during the non-duty hours of the employees concerned
  - **MUST** approve for: Collective Bargaining
  - **MAY** approve for: Other representational activities
  - **MAY** NOT approve for: Internal union business
Past Practice

5 USC 7117

- Once the parties establish a practice it becomes a condition of employment and must be Bargained
- You do not have to bargain over the decision to change a practice which conflicts with law or a government-wide regulations

  • Management is not free of the obligation to provide the union with advance notice of its intent to change what has been a condition of employment
  • Management must also bargain on demand on bargainable proposals which come back
QUESTIONS