

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

5 USC 7103

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/manpower)
- 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
FLRA Proceedings
 - **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 bargain-able proposals which come back

QUESTIONS

