

Federal Labor—Management Relations

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Basics of Federal Labor—Management Relations

Principal References

Title 5, Chapter 71, of the United States Code contains the Federal Service Labor-Management Relations Statute. This statute, established by Congress, recognizes the rights of employees to organize, collectively bargain, and (through their labor union) participate in decisions that impact them. It also recognizes management’s rights to make certain business decisions needed to execute its mission.



Defense Logistics Agency Regulation 1426.1 describes the Agency’s Labor-Management Relations Program.

There is also a Master Labor Agreement (MLA) between the Defense Logistics Agency and the American Federation of Government Employees (AFGE). While AFGE represents the largest number of Agency employees, there are other unions within the Agency representing other groups of employees. Additionally, there are collective bargaining agreements, regulations, practices, and procedures at various field locations.

How Labor-Relations Functions on a Daily Basis

Employees, unions, and management are expected to work together to achieve the sound and efficient operation of this Agency as it supports the warfighter, while ensuring that the rights of all parties (employees, union, and management) are protected.

However, labor-management relations can seem like a complicated intertwining of conflicting rights that often leave supervisors scratching their heads. To some, labor-management relations seems to be nothing more than complaints, grievances, Unfair Labor Practices (ULP), and demands to bargain from the union. Since labor-management relations can become contentious (and litigious), it pays supervisors to understand how the process works.

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The challenge for supervisors is to understand how labor-management relations work in the Federal Service, and then to make sound decisions that help supervisors avoid grievances, ULPs, etc. There will be occasions when, in spite of management's best efforts, complaints and conflicts result among employees, unions, and management. However, supervisors who cultivate a sound understanding of labor-management relations can often head-off problems and minimize conflict and hard-feelings.

- Supervisors should work closely with their servicing Labor Relations

Specialist in the Office of Human Resources. Frequent discussions with a Labor Relations Specialist may be necessary as supervisors try to weave their way through specific labor-management issues. It is better to get a grasp on such issues as soon as possible.

Principal References

Employees have the following rights:

- Form, assist, or join (or not to join) a union.
- Act as a union representative (a union steward).
- Engage in collective bargaining (negotiating) through the union.
- File grievances or Unfair Labor Practices (ULP).
- Exercise these rights without coercion or reprisal.

Employees have a statutory right, that is, the law allows them to organize themselves into groups known as "bargaining units." If employees make such a decision, they then have the right to elect a union to represent them in any dealings with management. Employees are free to do this without threats, coercion, intimidation, or interference from management.

However, certain groups of employees cannot be included in a bargaining unit, per the Federal Service Labor-Management Relations Statute. They include:

1. Management official or supervisors
2. Confidential employees (act in a confidential manner with respect to an individual who formulates or affects management policies in the field of labor-management relations)

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3. Employees performing personnel work (unless it is purely clerical)
4. Employees who administer provisions of the Statute itself
5. Professional employees (unless a majority vote to be included in a bargaining unit)
6. Employees engaged in intelligence, investigative, or security work directly impacting national security
7. Employees engaged primarily in investigative or audit work relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency

As you can see, it is important for a supervisor to know which employees he or she supervises are in a bargaining unit and represented by a union, and which are not. It can sometimes be difficult to make such determinations. The good news for supervisors is that decisions as to who is “in” or “not in” a bargaining unit is made by the Office of Human Resources.



Information about an employee’s bargaining unit status can be obtained from the cover sheet of their position description, but you should confirm this

information with your servicing specialist from the Office of Human Resources. As a general rule, NSPS employees are not in a bargaining unit – all others are. But, again, check with your Office of Human Resources since there may be exceptions.

Where unions are established, employees may decide to join or refrain from joining them. Employees who join a union are typically required to pay union dues via a payroll deduction. It is important to understand that even if employees choose not to pay dues and not become active union members, they are still part of the bargaining unit and are represented by the union. For example, let’s say a local union represents all employees in an office with accountants and auditors. However, an employee who has not formally joined the union and does not pay dues files a grievance with management about a decision to deny his annual leave request. That employee, even though he does not pay dues, is a member of the bargaining unit and is entitled to representation from the union in dealing with management. Thus, the union has the duty to fairly represent all bargaining unit employees.

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Union Rights

Unions are entitled to

- act on behalf of bargaining unit employees.
- negotiate agreements for bargaining unit employees.
- voluntary dues payment from members.
- information needed to carry out its representational responsibilities of bargaining unit members.

Employees typically select a union to represent them through an election process overseen by the Federal Labor Relations Authority (FLRA). Once a union wins an election it immediately has the authority to represent bargaining unit employees with management over such matters as “personnel practices and policies” and “working conditions.”

“Personnel practices and policies,” both written and unwritten workplace rules include, but are not limited to, the following:

- Merit Promotion
- Overtime
- Hours of Duty
- Leave (annual; sick; leave without pay; administrative leave)
- Breaks
- Disciplinary and adverse actions
- Grievance procedures

“Working conditions” include the following:

- Safety clothing, tools and equipment
- Ventilation
- Heating & Lighting
- Parking

Unions typically bargain over these matters with management during formal contract negotiation. Such negotiations usually result in the parties agreeing to sign a written document referred to as a “contract,” “union agreement,” or “Master Labor Agreement.” These contracts stay in effect for a period of time as agreed to by the parties (management and the union).

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However, unions also have the right to negotiate with management during the life of the contract when management proposes to take some action that will have an impact on the working conditions of bargaining unit employees. For example, if management decides to streamline a work process by co-locating all administrative functions and employees presently dispersed

throughout the organization into a single office, the union may request to negotiate over certain aspects of this reorganization as allowed by law.

There are also situations when the union may represent small groups of employees, or even individual employees, during management-initiated investigations into possible employee misconduct, grievance meetings, and formal discussions. These “formal discussions” are typically formal meetings initiated by at least one management representative to discuss one or more working conditions with at least one bargaining unit employee. Formal discussions, bargaining unit employees’ right to union representation during investigations, and grievance meetings, will be addressed in more detail later in this module.

Management Rights

Yes, management does have rights!

In fact, management has the statutory right to do the following:

- Make decisions regarding financial resources.
- Determine organizational structure.
- Decide on the numbers, types and grades of employees needed to do work.
- Decide what and when work will be done.
- Determine qualifications of employees needed to do the work.
- Deciding which employees will do the work.
- Making decisions to hire, promote, reward, detail, discipline, etc., employees.

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Although management has these broad rights, unions have the right to represent bargaining unit employees in negotiating specific rules as to how management will exercise its rights. For example, management has the right to discipline employees. However, unions may ask to negotiate over the length of time an employee has to respond to a proposed disciplinary action. Or, management may decide to reorganize and reassign some bargaining unit employees. The union may ask to negotiate over the amount of advance notice it receives prior to any proposed reorganization and the amount of advance notice employees will receive prior to being reassigned.

Formal Discussions

As noted above, unions are entitled to represent bargaining employees during formal discussions—meetings called by management to discuss one or more working conditions with bargaining unit employees. However, deciding what really constitutes a “formal discussion” can be a tricky decision and should always be made in conjunction with the Labor Relations Specialist in your Office of Human Resources. The best way to determine if a meeting with a bargaining unit employee constitutes a formal discussion is to consider all of the following:



1. If the meeting will involve at least one of your bargaining unit employees and one management representative (typically you, or another management representative such as a personnel specialist), this may be a formal discussion.
2. Meetings about working condition or personnel policies/rules or meetings to discuss a grievance, EEO complaint, etc., are characteristic of “formal discussions.”
3. The last thing you must consider is how “formal” this meeting will be. Here are some things a third party might look at in determining whether or not a meeting is (was) truly a formal discussion:

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- a. Is attendance of one or more bargaining unit employees required at this meeting?
- b. Is there a formal (written) agenda?
- c. Will notes be taken?
- d. What is the issue or issue involved?

This is why it is so important to engage your servicing Labor Relations Specialist in helping you decide if you need to invite the union to any meeting you may be having!

If, after discussing the matter with your servicing Labor Relations Specialist, you decide that a formal discussion will be held between one (or more) of your bargaining unit employees and one (or more) management representatives, you will need to do the following:

1. Provide the union with ample notice as to the date, time, and location of this meeting.
2. Allow a union representative to attend this meeting.
3. Permit the union representative to participate at this meeting to the same extent as your bargaining unit employee.

It is prudent to contact the union in writing (e.g., via e-mail), or create some reliable administrative record of you attempt to contact the union.

Investigations

As There may be occasions when you need to conduct investigations (ask questions) of a bargaining unit employee, typically because it is suspected that the employee may have done something improper. Such meetings may trigger what is referred to as a bargaining unit employee's "Weingarten Right"—the right for the employee to invite the union to this meeting in a representative capacity. The name "Weingarten" is simply a reference to a case decision by the National Labor Relations Board (NLRB) that led to this statutory right for bargaining unit employees in the Federal sector.

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"Weingarten Meeting" - National Labor Relations Board (NLRB)

Here are things indicative of a "Weingarten Meeting" (again, you are urged to consult with the Office of Human Resources before conducting such a meeting).

- a. Investigatory questions will be asked.
- b. Meeting will include a representative of management and a bargaining unit employee.
- c. Employee reasonably believes the questioning could lead to disciplinary action.
- d. Employee must request representation.

If these four factors exist, then it is a "Weingarten" meeting.

One key distinction between a "formal discussion" and a "Weingarten" meeting is that management must invite the union to attend a "formal discussion" it may convene, but it is up to bargaining unit employees to invoke their "Weingarten Right." If the employee fails to invoke this "right," management simply proceeds with its investigation.

If an employee invokes his or her "Weingarten Right," the union representative attending this investigation must be permitted to represent the bargaining unit employee. That is, the union representative may ask questions and/or raise issues reasonably related to the matter at hand so long as they do not interfere with management's investigation. But, you are entitled to get accurate, honest answers to your questions from your employee at this investigation.

Listed below are additional suggestions when conducting investigations. This is not a complete list. Each investigation has its own unique set of circumstances. Consult with your Office of Human Resources for additional advice/suggestions:

1. Have another management witness with you at the investigation to also ask questions and take notes. Make sure you brief him or her in advance of the issue at hand to ensure active participation in the investigation—they are not there simply to take notes.

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2. Secure a private room (floor to ceiling walls) as opposed to an “open” area.
3. Review your bargaining agreement and consult with your Office of Human Resources regarding how much time to give an employee to obtain union representation if and when they invoke their “Weingarten Right.”
4. Take notes. Make sure you get answers to your questions. If an employee refuses to answer, remind them that their honesty and credibility during the investigation may determine your course of action.
5. Insist upon the employee behaving professionally at this investigation. While it is understandable for an employee to be nervous, you should not tolerate yelling, table-pounding, profanity, etc.

Official Time



“Official time” means the time spent by a union steward representing employees during hours of duty. If you happen to supervise a union steward, it is important for you to be aware of any language in your union contract about official time. Consult with the Office of Human Resources.

Union stewards are allowed official time for representational duties that are reasonable, necessary, and in the public interest. However, official time may not be used for internal union business (e.g., collecting union dues).

Some union representatives spend small or intermittent amounts of time on representational duties. Other union stewards may spend significant amounts of time representing employees, preparing for cases, conducting research, etc. It is important to have an open line

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of communication with any union stewards you may supervise and to make sure they are properly making (and you are granting) valid official time requests. This is an important time and attendance (record keeping) responsibility for both you and union representatives.

Unfair Labor Practices (ULP)

Any party (union, employees, or management) may file an Unfair Labor Practice (ULP) “charge” against one or two of the other parties if it believes there has been some violation of the law. In reality, unions are much more likely to file ULP charges (against management) than any of the other two parties. This is because management is usually the party taking an action in the workplace (reorganizing, realigning, reassigning, detailing, training, etc.), and the union is typically reacting to management’s actions and decisions, which often impact bargaining unit employees.

Who are these ULP charges with? Who investigates these charges and rules on their merit? The Federal Labor Relations Authority (FLRA) is an independent administrative Federal agency established under Title VII of the Civil Service Reform Act of 1978. The FLRA’s responsibilities include resolving complaints of unfair labor practices, adjudicating issues related to the duty to bargain and negotiability, and resolving impasses during negotiations. The FLRA has a number of regional offices throughout the country.

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Examples of ULPs include:

- Failure to bargain
- Interfering with employees' rights
- Anti-union animus
- Bypassing the union by dealing directly with bargaining unit employees

There are some very practical ways to avoid ULPs or reduce the number of filing against management:

- Respect employee and union rights.
- Have a professional, business relationship with the union.
- Try not to take complaints, questions, etc., personally from union representatives and employees. Rather, look for ways to resolve problems before it becomes necessary for any party to file a ULP.
- Consult with your Labor Relations Specialist in the Office of Human Resource frequently for advice and assistance.
- Communicate with employees and the union—informed employees and union representatives are much more likely to be receptive to management's actions (and less likely to file ULPs).

In the event the union (or an employee/employees) files a ULP charge against management, the FLRA will provide the agency (management) with a copy of the ULP. The FLRA will assign an agent to investigate the ULP charge. The FLRA agent will normally speak with the parties (usually by phone) to get a better understanding of the facts and circumstances of the case and determine if there is merit to the ULP charge. The investigating agent typically offers management the opportunity to submit a written response to the charge. However, the FLRA will also look for opportunities to resolve the matter before it conducts a more in-depth investigation, which may include on-site interviews, obtaining sworn statements, obtaining additional documentation from one or more parties, etc.

If a ULP charge filed by the union is found to have "merit" after the FLRA completes its investigation, a "complaint" will be issued against the Agency. Management will have the opportunity to settle the matter or defend itself in an administrative law proceeding, with the FLRA representing the union.

Management is typically represented at FLRA hearings by the Office of Human Resources and/or Office of Counsel.

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Grievances

Most supervisors cringe (and sweat) when they hear the word “grievance.” But, grievances (complaints) are really a natural outgrowth of what happens in the complicated world of labor-management relations. People may simply misunderstand each other. Or, written agreements that are meant to enlighten may contain ambiguous language that is subject to interpretation by reasonable people. The workplace can be a complicated place with diverse opinions and scores of workplace issues. Hence, grievances are filed.

Bargaining agreements usually contain language about grievances—what may (and may not) be grieved, timeframes for filing and responding to grievances, procedures for the parties to follow, etc. Most grievance procedures contain multiple “steps” that allow the parties multiple opportunities (usually 2 to 4 “steps”) to reach agreement somewhere in the management chain before it may be necessary to raise the matter to an outside (third) party, such as an arbitrator.

However, union agreements frequently allow the parties to engage in a process known as Alternative Dispute Resolution (ADR)

may include mediation, shuttle diplomacy, or any other informal means

However, union agreements frequently allow the parties to engage in a process known as Alternative Dispute Resolution (ADR), or some similarly named process, as a means to resolve problems before it becomes necessary to engage the services of an arbitrator. ADR is a method of resolving conflicts without resorting to adversarial approaches (e.g., arbitration), which can be very stressful since sworn testimony and cross-examination is involved. Adversarial approaches can be costly to the Agency as well in terms of money, time, and bruised egos.

The ADR process may include mediation, shuttle diplomacy, or any other informal means to help the parties resolve a matter in dispute. The services of a third party is usually engaged to help steer the parties to consider alternatives to resolve their dispute, but without imposing a decision, as an arbitrator would. The ADR process allows the parties greater control in making a decision that works for them as opposed to getting a third party decision imposed upon them, which

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neither party may deem satisfactory. Your bargaining agreement will contain more details about ADR.

Handling and resolving grievances is a real challenge. It is difficult not to take grievances personally, but it is important for supervisors, with the advice and assistance of the Office of Human Resources, to try to distance themselves from emotional issues and focus on a solution whenever practicable.

It is important to remember that the union has the right to attend grievance meetings even if the employee does not want the union to attend (this is not to be confused with an employee's "Weingarten Right" which only allows the union to attend the investigatory meeting at the employee's request).

Final Suggestions

Here are some final thoughts and suggestions:

- Get a copy of your national labor contract and any local supplements. Read them and keep them handy!
- Obtain a list of the union representatives for your local activity. If you supervise a union steward, get some practical advice from your servicing Labor Relations Specialist concerning things such as official time.
- Communicate with employees and union representatives about what management is doing. This will likely lead to more productive labor-management relations (and fewer grievances and ULPs).
- Call your Labor Relations Specialist as often as needed. Ask them for their advice and assistance. Problems do not get better as they age!
- Seek ways to resolve problems before grievances or ULPs are filed. There are usually reasonable solutions to problems. Remember, when a matter is raised to a third party, such as an arbitrator or the FLRA, all parties (union, employees, and management) lose control of the issue.
- Visit the FLRA Web site and the OPM Web site to get additional information on these topics and more.

- End -