

Department of the Interior Departmental Manual

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Series: Personnel Management

Part 370: Departmental Personnel Program

Chapter 711: Labor-Management Relations

Originating Office: Office of Human Resources

370 DM 711

1.1 **Purpose.** This chapter provides Departmental policy for the Labor-Management Relations Program within the Department of the Interior (DOI).

1.2 **Scope.** This policy applies to all bureaus and offices, particularly those where a labor organization (union) holds or seeks to hold an exclusive recognition.

1.3 **Authority.** Chapter 71 of Title 5, United States Code: The Federal Service Labor Management Relations Statute (FSLMRS or the Statute).

1.4 **Policy.** Management officials are expected to apply the provisions of the FSLMRS so as to promote cooperative labor-management relations that further the mission and goals of the Department. The DOI labor-management relations program is founded on the belief that labor unions are effective channels of communication with significant groups of employees and that prompt and equitable settlement of disputes can be best accomplished at the local level by utilizing flexible and informal procedures.

1.5 **Definitions.**

A. Federal Service Labor-Management Relations Statute (FSLMRS or Statute). The law (Chapter 71 of Title 5, United States Code) that provides the basis for the Federal labor relations program and establishes rights and obligations for management, unions, and employees.

B. Federal Labor Relations Authority (FLRA or Authority). The independent agency responsible for administering the Statute.

C. Management Official. An individual employed by an agency whose duties and responsibilities require or authorize the individual to formulate, determine, or influence the policies of the agency.

D. Unfair Labor Practice (ULP). A violation of a provision(s) of the Statute as defined under Section 7116.

E. Labor Organization. An organization composed in whole or in part of employees, in which employees participate and pay dues, and which has the purpose of dealing with an agency concerning grievances and conditions of employment, except for organizations specified in 5 U.S.C. 7103(a)(4)(A)-(D).

F. Conditions of Employment. Personnel policies, practices and matters affecting working conditions, except for those policies, practices and matters relating to political activities prohibited under Title 5, Chapter 73, Subchapter III, relating to the classification of any position, or to the extent such matters are specifically provided for by Federal statute.

G. Collective Bargaining Agreement (CBA). The written negotiated agreement establishing the terms and conditions of employment governing the relationship between agency management and a labor organization (exclusive representative). This term does not include supplements dealing with wages and pay matters or practices negotiated pursuant to Section 704 of Public Law 95-454 and Section 9(b) of Public Law 92-392.

H. Exclusive Representative. Any labor organization which is certified as the *exclusive representative* of employees in an appropriate unit pursuant to section 7111 of the Statute, or was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit on the basis of an election or on any basis other than an election, and continues to be so recognized in accordance with the provisions of the FSLMRS.

I. Bargaining Unit. A grouping of employees that a labor organization represents or seeks to represent and that the FLRA finds appropriate under the criteria of the FSLMRS (community of interest, effective dealings, efficiency of operations) for collective bargaining purposes. (Pursuant to 5 U.S.C. 7112(b) and (c), certain types of employees cannot be included in bargaining units, such as management officials and supervisors, confidential employees, employees engaged in personnel work in other than a purely clerical capacity, employees engaged in intelligence, counterintelligence, investigative or security work which directly affects national security, and employees engaged in administering the provisions of the FSLMRS.)

J. Supervisor. An agency employee who is given the authority to hire, assign, direct, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, and 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. With respect to any unit including firefighters, the term only includes those individuals who devote a preponderance of their work day to exercising such authority.

1.6 Responsibilities.

A. Assistant Secretaries. The responsibilities of the Assistant Secretaries with respect to labor-management relations are included in the delegation of authority for personnel management in 205 DM 8. In general, these responsibilities have been delegated to bureau and office human resources officers who are responsible for labor relations program implementation

within their respective organizations.

B. Director, Office of Human Resources, Office of the Secretary. Oversees the Department's labor-management relations program and is responsible for the following and all other implied duties related to administering the labor-management program:

(1) Representing the Department in communications with the headquarters offices of those labor unions with whom the Department has a National Consultation Relationship (NCR), the FLRA, the Office of Personnel Management (OPM), other Federal or non-Federal agencies, and associations or organizations, in matters affecting the policy and statutory or regulatory responsibilities of the Department in such matters.

(2) Coordinating with the Office of the Solicitor (SOL) on legal matters relative to the labor-management relations program, including issues involving pending litigation or which require legal expertise and/or guidance.

(3) Guiding, supporting and directing bureaus and offices in any phase of bureau activities dealing with labor-management relations matters, except that legal issues, including proposed or pending litigation, shall be coordinated with SOL.

(4) Establishing procedures to ensure the prompt receipt of information, reports, and correspondence as determined by the Office of Human Resources (OHR) regarding significant labor-management issues, and in consultation with SOL on legal issues.

(5) Reviewing and approving collective bargaining agreements and amendments and revisions to such agreements under agency head review.

(6) Establishing Departmental labor-management programs and policies designed to promote labor-management cooperation for the purpose of furthering the mission and goals of the Department and to decrease costs associated with adversarial relationships.

C. Office of the Solicitor.

(1) Providing legal representation and/or guidance to management/human resources for third-party litigation and other matters involving pending litigation or which require legal expertise and/or guidance.

(2) Providing legal representation and/or guidance to management/human resources with regard to the collective bargaining process, including legal sufficiency review of CBAs and memoranda of understanding (MOU).

(3) Providing legal advice/comments regarding labor-management relations policy proposed by OHR.

D. Heads of Bureaus and Offices.

(1) Implementing the DOI labor-management relations program consistent with this chapter and the Statute.

(2) Establishing a point-of-contact for labor-management relations at the headquarters level if a collective bargaining relationship(s) exists in the bureau or office.

(3) Ensuring the requirements for notification and coordination with the Department, as described in this chapter, are met.

(4) Providing information and/or data to the Department, as requested, for DOI's use and/or for responding to OPM or other Federal or non-Federal agencies.

E. Managers and Supervisors. Managers and supervisors are responsible for meeting their obligations under the FSLMRS, which establishes a legal right for Federal employees to organize and bargain collectively with agency management, through labor organizations, over the negotiable conditions of their employment.

1.7 Negotiations. Before starting negotiations for new or modified collective bargaining agreements subject to review by the Director, OHR, the local labor relations office shall notify the appropriate bureau or office headquarters labor relations office, which shall in turn notify OHR, Workforce Management Division (OHR-Labor Relations) that contract negotiations are anticipated. The appointment of management's chief negotiator must be approved in advance of the start of negotiations by OHR-Labor Relations.

Management's chief negotiator must consult and seek guidance from SOL and OHR-Labor Relations during the course of negotiations to ensure consistency with other collective bargaining agreements as well as feasibility and legality of proposals by either party.

A. Renewal. At least ten (10) days prior to the commencement of the open period in a collective bargaining agreement (the period prior to the termination date of the contract during which either management or the union may notify the other of their desire to reopen or terminate the agreement pursuant to the Statute or applicable CBA), the appropriate labor relations office, or designee, shall review the contract and determine if there are any conflicts between its provisions and applicable laws, Executive Orders, regulations of other appropriate authorities outside the Department, or Departmental policy issued after the contract was executed (except for provisions preserved for bargaining under Section 704 of Public Law 95-454 and Section 9(b) of Public Law 92-392), or if there is any language identified by management as being burdensome, impractical or written in such a way as to create difficulty administering and/or interpreting. If a conflict/problem exists, the management officials at the negotiating level, in consultation with the appropriate bureau or office headquarters labor relations office, will take appropriate steps to reopen the agreement and address the identified conflicts and/or concerns or provide the Director, OHR, with the reasons the agreement was not re-opened. Once complete, the agreement must be submitted to OHR-Labor Relations for agency head review as described in 1.8 below.

B. Exceptions to DOI Rules/Regulations and Compelling Need Assertions.

(1) Unless prior authorization as specified in this section is obtained from the Director, OHR, bureau management may bargain only on rules or regulations issued at or below the level of recognition. Management must obtain an exception to bargain on proposals which conflict with policy, rules or regulations issued at the Departmental level (e.g., Departmental Manual issuances, Secretarial Orders, etc.). If management wishes to request specific exceptions to DOI policy, rules or regulations, either after reviewing proposals or during negotiations, the bureau or office headquarters labor relations office will submit a memorandum to OHR justifying the request for exceptions. Only the Director, OHR, or his/her designee, may grant exceptions from DOI policy, rules or regulations to permit negotiations on specific proposals which conflict with DOI policy, rules or regulations. Note that management does not have the authority to either grant or request exceptions to federal laws, rules, statutes or regulations.

(2) If deemed appropriate by the Director, OHR, denial of a request for an “exception” may cause the Department to declare the bargaining proposal non-negotiable based on a “compelling need” for the rule or regulation.

1.8 Agency Head Review. Under 5 U.S.C. 7114(c), negotiated collective bargaining agreements are subject to approval by the head of the agency; this authority has been delegated to the Director, OHR. All negotiated agreements are subject to agency head review. This includes newly negotiated or renegotiated basic collective bargaining agreements, all subsequent changes to those agreements (amendments), and all local and/or supplemental agreements (Memorandums of Understanding, Memoranda of Agreement, etc.) regardless of whether they are intended to be stand-alone documents or, once approved, will become part of the basic agreement. All agreements must be submitted to the Director, OHR (attn: OHR-Labor Relations) for review and approval using the following procedures:

A. The bureau or office headquarters labor relations office, or local labor relations office, shall submit an advance draft copy of any agreements nearing execution to OHR–Labor Relations for review and preliminary approval or notification of negotiability concerns which may result in disapproval. Submissions may be made by e-mail, facsimile, express mail or hand delivery (e-mail delivery is preferred). A copy should simultaneously be provided to the bureau or office headquarters labor relations office if not already shared with that office. OHR shall provide a copy to SOL for legal review of and comment on the proposed terms.

B. Upon execution of the agreement, the bureau or office headquarters labor relations office, or local labor relations office, must submit to OHR-Labor Relations the original executed (signed and dated by the parties to the contract) collective bargaining agreement and two copies for review within three business days of contract execution. This submission must include complete contact information for both the management and union representatives which are generally the chief negotiators. A copy of the executed agreement must also be sent to the bureau or office headquarters labor relations office if not already shared with that office. Unless the ground rules specifically state otherwise (for example, if the Agency designates a certain management official at or above the level of exclusive recognition to sign the contract) , the date

of execution is considered to be the date the last union or management signature is obtained; the contract should not be dated until ALL necessary signatures are obtained. The signature page must include a signature/approval block for the Director, OHR.

C. OHR-Labor Relations shall provide a copy of the executed agreement to SOL for legal sufficiency review and for comment on the proposed terms.

D. At the time the contract is submitted for agency head review, the bureau or office headquarters labor relations office shall certify to OHR- Labor Relations that a bureau or office headquarters labor relations official has reviewed the draft collective bargaining agreement and noted any areas of concern with regard to negotiability issues. When such certification cannot be made, the bureau must provide the reasons in writing to OHR-Labor Relations.

E. OHR-Labor Relations will complete its review of the executed contract within 30 days and issue a letter of approval or disapproval to the originating office, with a copy to the bureau or office headquarters labor relations office.

(1) OHR-Labor Relations will endeavor to notify the parties prior to the expiration of the 30-day review period whenever statutory deficiencies are identified in order to provide the parties an opportunity to correct the deficiencies and avoid disapproval. OHR-Labor Relations will be available for consultation and assistance during this time.

(2) If the parties agree to changes which will bring the agreement into compliance prior to the expiration of the 30-day review period, replacement pages initialed by representatives for both parties must be provided prior to the expiration of the 30-day review period for insertion into the final contract.

F. The bureau or office headquarters labor relations office, or local labor relations office, must provide OHR-Labor Relations a printed copy of the approved collective bargaining agreement within 10 days of printing.

1.9 Wage Supplements to Basic Collective Bargaining Agreements. Wage Supplements will be signed and dated by the appropriate labor-management negotiating committees and by the management officials exercising authority at the bargaining level.

A. The bureau or office headquarters labor relations office, or local labor relations office, that originates a supplement to an agreement must send the original and any required copies (as determined by the bureau) to the appropriate administrative authority at bureau or office headquarters for approval through normal bureau channels. Simultaneously, a copy must also be sent to OHR-Labor Relations. OHR Labor Relations will notify the bureau or office if it identifies any violations of Departmental policies or regulations.

B. Approvals of supplements must be made by the appropriate bureau or office official within 30 calendar days from the date of signature at the bargaining level, unless applicable ground rules state otherwise.

C. Authority to approve supplements concerning wage rates only may be delegated by the bureau or office to the appropriate authority.

1.10 Negotiability Appeals. OHR-Labor Relations must be promptly informed of any negotiability appeals filed by a union in response to management's written allegation that a bargaining proposal is non-negotiable under the FSLMRS.

A. Initial notification by the local labor relations office making the allegation, along with a copy of the written allegation, must be forwarded to OHR-Labor Relations within three business days after issuance of the allegation of non-negotiability.

B. Copies of all appeal documents submitted by the Union, or FLRA Orders and Notices received by the local labor relations office must be submitted to OHR-Labor Relations within three business days of receipt.

C. The local labor relations office and/or bureau or office headquarters labor relations office must consult with OHR-Labor Relations prior to filing statements of position or responses to union replies. OHR-Labor Relations will coordinate with SOL.

D. Copies of all documents submitted to the FLRA must be sent to the Director, OHR (attn: OHR-Labor Relations).

1.11 Other Third-Party Matters.

A. Representation Issues. OHR-Labor Relations must be notified by the bureau or office headquarters labor relations office and/or local labor relations office of any organizing efforts and sent a copy of all representation petitions filed by a labor organization(s). OHR-Labor Relations must also be notified by the bureau or office labor relations office and/or local labor relations office of any pending elections and copies of any Certifications of Representation issued by the authority must be sent to OHR-Labor Relations within three business days after receipt by the local parties. OHR-Labor Relations will promptly notify OPM and request a bargaining unit status code which, once assigned, will be provided to the headquarters and/or local labor relations offices. In cases where there is doubt as to whether the unit that a labor organization seeks to organize is an appropriate unit under the statute and a hearing may be necessary, OHR-Labor Relations and SOL must be promptly notified for consultation.

B. Arbitration/Impasses. Normally, notification to the Department of pending arbitrations before an arbitrator or impasse resolution before the Federal Service Impasses Panel (FSIP) is not required. However, in the event the bureau or office headquarters labor relations office and/or local labor relations office have concerns regarding a case and/or does not believe there is adequate expertise to address the matter, that office will consult with OHR-Labor Relations and/or SOL and a joint decision as to how to proceed will be made. Bureaus should use good judgment in determining if and when the Department should be notified of pending issues (i.e., issues that could have Department-wide implications). Arbitration decisions which management wishes to appeal to the FLRA must be brought to the attention of OHR-Labor Relations and SOL at least 21 days prior to the deadline for filing an appeal for

consultation/recommendation.

C. Unfair Labor Practices. Normally, notification to the Department of unfair labor practice (ULP) charges is not required. However, in the event a formal complaint is issued by the FLRA and/or the case is scheduled to go before an Administrative Law Judge (ALJ), the bureau or office headquarters labor relations office and/or local labor relations office will notify and consult with OHR-Labor Relations and SOL at least 21 days prior to the hearing date and a joint decision as to how to proceed will be made. Bureaus should use good judgment in determining if and when the Department should be notified of pending ULP issues (i.e., issues that could have Department-wide implications.). ALJ decisions which management wishes to appeal to the Authority (or appeals of FLRA decision to a circuit court) must be brought to the attention of OHR-Labor Relations and SOL at least 14 days prior to the deadline for filing an appeal for consultation/recommendation. Bureaus and offices may only file management-initiated ULP charges after discussion with and approval of OHR-Labor Relations.

D. Notification. Once rendered, a copy of all third-party decisions issued by the FLRA will be provided to OHR-Labor Relations, which will forward a copy to the Solicitor's office, for recordkeeping/information purposes and/or possible appeal where applicable (e.g., ULP or negotiability cases) pursuant to 5 U.S.C. 7123.

1.12 National Consultation Rights. If requested, labor unions which qualify under the criteria established by the FLRA's regulations must be granted National Consultation Rights (NCR) by the Department (or those bureaus which have authority to formulate substantive changes in conditions of employment, or have functions national in scope that are implemented in field activities).

A. Any new or substantively amended Department-wide policy which may result in a substantive change in conditions of employment must be transmitted to OHR-Labor Relations at least 21-days prior to issuance. Should OHR-Labor Relations determine that national consultation is required; OHR-Labor Relations shall coordinate notification and transmittal of materials to the appropriate union officials.

B. Any labor organization having NCR with the Department will be informed of the proposed change and shall be permitted reasonable time (normally 15 days) to present its views and recommendations regarding the change. If provided, any union comments must be considered by the Department before taking final action and the labor organization providing the input must receive a written statement of the reasons for taking the final action.

C. Any bureau or office having NCR with any labor organization will follow the procedures for notification as outlined in the Statute and/or any applicable NCR agreement.

1.13 Communication with Special Organizations. The exclusive recognition of labor unions does not affect the special relationship the Department has with other lawful organizations, such as professional groups or employee organizations provided for in 5 CFR Part 251. However, consultations with these organizations should not be on matters of general labor management policy and should be limited to matters within the direct interest of members of the organization.

Consultation/discussion may not concern matters which may impact general working conditions of bargaining unit employees, unless the exclusive representative (i.e., union) has been given an opportunity to be present at such discussions.