



United States Department of the Interior

OFFICE OF THE SECRETARY
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PERSONNEL BULLETIN NO. 19-15

SUBJECT: Department of the Interior Policy on Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining and Use of Taxpayer Funded Union Time

1. Purpose. This Personnel Bulletin (PB) provides Department of the Interior (DOI) policy and the standards and procedures for developing efficient, effective and cost-reducing approaches to collective bargaining and the use of tax-payer funded union time (TFUT), also known as “official time”. It supersedes previous guidance issued under Personnel Bulletin No. 18-05, dated July 9, 2018, and Interim Internal Management Guidance: Collective Bargaining and Use of Taxpayer-Funded Union Time, dated December 14, 2018. In addition, this PB supersedes the existing guidance regarding labor-management relations found in sections 1.7A and 1.8 of Department Manual (DM) Chapter 370 DM 711, Labor-Management Relations, until corresponding changes in the DM are made.

2. Authorities.

- A. Title 5 of the United States Code (U.S.C.), Chapter 71, The Federal Service Labor-Management Relations Statute (the Statute)
- B. Executive Order 13836: Executive Order on Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining, dated May 25, 2018 (EO 13836)
- C. Executive Order 13837: Executive Order on Ensuring Transparency, Accountability and Efficiency in Taxpayer Funded Union Time, dated May 25, 2018 (EO 13837)
- D. Executive Order 13839: Executive Order on Promoting Accountability and Streamlining Removal Procedures Consistent with Merit Systems Principles, dated May 25, 2018 (EO 13839)
- E. 370 DM 711, Labor-Management Relations, dated November 21, 2011

3. Background. Section 7101(b) of Title 5, U.S.C., requires the Statute to be interpreted in a manner consistent with the requirement of an effective and efficient Government. Negotiated term Collective Bargaining Agreements (Term CBAs) should promote an effective and efficient means of accomplishing agency missions; encourage the highest levels of employee performance and ethical conduct; ensure employees are accountable for their conduct and performance on the job; expand agency flexibility to address operational needs; reduce the cost of agency operations, including with respect to the use of taxpayer-funded union time; be consistent with applicable laws, rules, and regulations; not cover matters that are not, by law, subject to bargaining; and preserve management rights under section 7106(a) of Title 5, U.S.C. (management rights).

4. Definitions.

A. Agency Business. Work performed by federal employees, including detailees or assignees, on behalf of an agency, but does not include work performed on taxpayer-funded union time.

B. Bargaining Unit. A group of employees exclusively represented by a labor organization or union in an appropriate unit for collective bargaining under subchapter II of Chapter 71 of Title 5, U.S.C.

C. Discounted Use of Government Property. Charging less to use government property than the value of the use of such property, as determined by the General Services Administration, where applicable, or otherwise by the generally prevailing commercial cost of using such property.

D. Federal Mediation and Conciliation Service (FMCS). An entity providing mediation services and assistance to agencies and labor organizations in the resolution of negotiation impasses and other labor-management relations disputes.

E. Federal Service Impasses Panel (FSIP). An entity established by the Statute which resolves impasses arising from negotiations between federal agencies and labor organizations when FMCS bargaining and mediation assistance does not result in voluntary agreement.

F. Labor Organization or Union. Pursuant to the requirements of section 7103(a)(4) of Title 5, U.S.C., an organization that might be certified by the Federal Labor Relations Authority (FLRA) to exclusively represent employees over matters pertaining to grievances and conditions of employment.

G. Open Period. The period in a Term CBA prior to the expiration date during which either management or the union may notify the other of their desire to reopen and renegotiate, or if applicable terminate, the agreement.

H. Paid Time. Time for which an employee is paid by the Federal Government, including both duty time, in which the employee performs agency business, and taxpayer-funded union time. It does not include time spent on paid or unpaid leave, or an employee's off-duty hours.

I. Taxpayer-Funded Union Time (TFUT). Also known as "official time," time granted to a Federal employee to perform certain authorized union representational activities during duty hours pursuant to section 7131 of Title 5, U.S.C and EO 13837.

J. Term Collective Bargaining Agreement (Term CBA). A contract between the exclusive representative of a bargaining unit and agency management of a fixed or indefinite duration reached through substantive bargaining, as opposed to (i) agreements reached through impact and implementation bargaining pursuant to sections 7106(b)(2) and 7106(b)(3) of Title 5, U.S.C., or (ii) mid-term agreements, negotiated while the basic comprehensive labor contract is in effect, about subjects not included in such contract.

J. Union Time Rate (UTR). The total number of duty hours in the fiscal year that employees in a bargaining unit use for TFUT, divided by the total number of bargaining unit employees in such bargaining unit.

5. Negotiations. Before starting negotiations for a new or modified Term CBA, the local labor relations office shall notify the appropriate bureau or office headquarters labor relations office, which shall in turn notify DOI's Office of Human Capital, Workforce Relations Division (OHC-Labor Relations) that contract negotiations are anticipated. The name and contact information for management's designated chief negotiator, along with the anticipated management negotiating team members, must also be provided to and approved in advance by OHC-Labor Relations. *Appropriate management officials and/or supervisors shall participate on the management negotiating team*, along with appropriate labor relations practitioners, attorneys, and subject matter experts.

A. Renewal. At least **one year** prior to the commencement of the open period of a Term CBA, the appropriate bureau or office headquarters labor relations office, or designee, with assistance from OHC-Labor Relations must review the existing Term CBA to determine if there are any conflicts between its provisions and applicable laws, Executive Orders (EOs), regulations, other appropriate authorities outside DOI, or DOI 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 the Term CBA.

(1) If **any** such conflicts or problematic language are identified, the appropriate management official **must**:

(a) notify the union of its intent to reopen and renegotiate the Term CBA at the earliest opportunity, which is normally during the open period of the Term CBA, and/or terminate any provision(s) inconsistent with law, rule or regulation (including EOs), as applicable. *A copy of this notification must be simultaneously provided to OHC-Labor Relations.*

(b) prepare a report to be provided to the Secretary, through OHC-Labor Relations, recommending new or revised CBA language to include in a renegotiated agreement that would better support the objectives outlined in section 3.

(c) consult and seek guidance from the Office of the Solicitor (SOL) Employment and Labor Law Unit (ELLU) during the course of negotiations, as necessary, to ensure consistency with other collective bargaining agreements as well as feasibility and legality of proposals by either party.

(2) If no conflicts or concerns are identified, the appropriate management official must provide written notification to OHC-Labor Relations that the Term CBA will not be reopened. Such notification must certify that:

(a) there are no conflicts between the provisions of the Term CBA and applicable laws, EOs, regulations, other appropriate authorities outside DOI, or DOI policy issued after the agreement 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); and

(b) there is no language identified by management as being burdensome, impractical or written in such a way as to create difficulty administering and/or interpreting the Term CBA.

Once complete, the Term CBA must be submitted to OHC-Labor Relations for statutory agency head review as described in section 6 below.

B. Limitations on Collective Bargaining.

(1) Consistent with EO 13839, management officials shall not negotiate language:

(a) that limits management from considering all past misconduct and other related factors in determining discipline.

(b) that prevents management from using the removal procedures set forth in Chapter 75 of Title 5, U.S.C. in appropriate cases to address instances of unacceptable performance.

(c) to the extent practicable, that extends the written notice of adverse action beyond the 30 days prescribed in section 7513(b)(1) of Title 5, U.S.C.

(d) that requires the use of procedures set forth in Chapter 43 of Title 5, U.S.C. (including any performance assistance period or similar informal period to demonstrate improved performance prior to the initiation of an opportunity period) before removing an employee for unacceptable performance.

(e) that limits management's ability to remove an employee from Federal service or take other appropriate disciplinary action, without first engaging in progressive discipline.

(f) that requires management to issue a suspension before proposing an employee's removal if the facts and circumstances warrant the proposal of a removal.

(g) that allows for opportunity periods to demonstrate acceptable performance (as provided for in Chapter 43 of Title 5, U.S.C.) beyond 30 days.

(h) that requires management to erase, remove, alter, or withhold from another agency any information about an employee's performance or conduct in that employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by an employee or setting an administrative challenge to an adverse personnel action.

(2) Consistent with EO 13839, management officials shall exclude from negotiated grievance procedures grievances related to decisions to remove an employee from Federal service for misconduct or unacceptable performance. Where agreement cannot be reached, to the extent permitted by law, management officials shall promptly seek assistance from the FMCS and, as necessary, the FSIP. If a Term CBA fails to achieve this goal, OHC-Labor Relations **must** be notified immediately.

(3) Consistent with EO 13839, management officials shall further exclude from negotiated grievance procedures or binding arbitration disputes concerning the assignment of ratings of records or awards of any form (e.g., cash awards, quality step increases, recruitment/retention/relocation incentive payments).

(4) Consistent with EO 13836, management officials must:

(a) eliminate provisions in Term CBAs requiring a bargaining method other than the traditional exchange of written proposals.

(b) not bargain over permissive subjects of bargaining, as set forth in section 7106(b)(1) of the Statute, with labor organizations subject to the provisions of Chapter 71 of Title 5, U.S.C.

(c) not bargain over procedures or appropriate arrangements, as set forth in sections 7106(b)(2) and (3) of the Statute, on matters that are covered by a Term CBA.

(5) Consistent with EO 13837, management officials must avoid agreements which would cause the UTR to exceed one hour, taking into account the size of the bargaining unit, and the amount of TFUT anticipated to be granted under sections 7131(a) and 7131(c) of Title 5, U.S.C. If management agrees to authorize amounts of TFUT that would cause the UTR in a bargaining unit to exceed one hour (or proposes to the FSIP or an arbitrator engaging in interest arbitration an amount that would cause the UTR in a bargaining unit to exceed one hour), OHC-Labor Relations **must** be notified immediately, but no later than five business days in advance of presenting or accepting such a proposal.

(a) These requirements do not apply to a UTR established pursuant to an order of the FSIP or an arbitrator engaging in interest arbitration, provided that the agency had proposed that the FSIP or arbitrator establish a UTR of one hour or less.

(b) These requirements do not prohibit management from authorizing TFUT as required under sections 7131(a) and 7131(c) of Title 5, U.S.C., or require management to include in a Term CBA language that precludes it from granting TFUT pursuant to those provisions.

(6) Consistent with EO 13837, management officials must ensure that employees spend no more than 25% of their paid time on union representational duties. (Any TFUT in excess of 25% of an employee's paid time used to perform non-agency business in a fiscal year under sections 7131(a) and 7131(c) of Title 5, U.S.C., counts toward the limitation in subsequent fiscal years.)

(7) Consistent with EO 13837, management officials must also ensure, through collective bargaining or as otherwise appropriate, that employees are prohibited from:

(a) receiving unrestricted grants of TFUT. Such unrestricted grants would include grants of TFUT that allocate a specific portion of an employee's tour of duty for TFUT (e.g., 100%, 50%, etc.). Rather, management must ensure that employees request and receive specific authorization prior to utilizing TFUT and ensure that it is used only for authorized purposes.

(b) engaging in lobbying activities during paid time in violation of section 1913 of Title 18, U.S.C.

(c) the use of free or discounted use of government property or other agency resources when acting on behalf of a Federal labor organization if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems.

(d) being reimbursed for expenses incurred performing non-agency business, unless required by law or regulation.

(e) using TFUT to prepare or pursue grievances on another employee's behalf, including arbitration of grievances, brought against an agency under negotiated grievance procedures pursuant to section 7121 of Title 5, U.S.C., except where such use is otherwise authorized by law or regulation. This prohibition does not apply to an employee using TFUT to prepare for, confer with an exclusive representative regarding, or present a grievance brought on the employee's own behalf; or using TFUT to appear as a witness in any grievance proceeding; or using TFUT to challenge an adverse action taken against the employee in retaliation for engaging in whistleblower activity, including for engaging in activity protected under section 2302(b)(8) of Title 5, U.S.C., under section 78u-6(h)(1) of Title 15, U.S.C., under section 3730(h) of Title 31, U.S.C., or under any other whistleblower law.

C. Time Limits.

(1) For collective bargaining negotiations, a negotiating period of six weeks or less to achieve ground rules, and a negotiating period of four to six months for a Term CBA under those ground rules, should ordinarily be considered reasonable and to satisfy the goal of "effective and efficient" collective bargaining.

(2) Any negotiations to establish ground rules that do not conclude after a reasonable period as described above should, to the extent permitted by law, be expeditiously advanced to the FMCS for mediation and, as necessary, to the FSIP. OHC-Labor Relations *must* be notified of any ground rules negotiations that exceed six weeks.

(3) Upon the conclusion of the sixth month of any Term CBA negotiation, OHC-Labor Relations shall receive prompt notice from appropriate bureau/office staff and shall receive monthly notifications thereafter regarding the status of negotiations until they are complete. OHC-Labor Relations will ensure this information is conveyed to the Secretary as required.

(4) If bargaining objectives and timeframes are not achieved due to a lack of good faith bargaining by the applicable labor organization, management must consult with OHC-Labor Relations to determine appropriate next steps.

6. Agency Head Review. Under 5 U.S.C. 7114(c), negotiated agreements are subject to approval by the head of the agency; this authority has been delegated to the Director, OHC. This includes all newly negotiated or renegotiated Term CBAs; all ground rules agreements for Term CBAs; all subsequent changes to Term CBAs (amendments); all supplemental agreements (memoranda of understanding [MOUs], memoranda of agreement [MOAs], etc.) that, once approved, will become part of or augment the Term CBA; and provisions imposed on the parties by the FSIP or FSIP-appointed arbitrator.

All agreements subject to agency head review must be submitted to the Director, OHC (attn: OHC-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** (electronic delivery preferred) of any agreements nearing execution to OHC-Labor Relations and to the Principal Deputy Assistant Secretary for Policy, Management and Budget for review and preliminary approval or notification of negotiability concerns which may result in disapproval. A copy should simultaneously be provided to the bureau or office headquarters labor relations office, as appropriate. **Management shall not execute the CBA until it receives preliminary approval from DOI.**

B. Unless the previously approved ground rules specifically state otherwise, the execution date of the agreement is considered to be the date the last union and/or management negotiating team member signature(s) is obtained. The execution date on the agreement must not be entered until **all** necessary signatures of the union and management representatives are obtained. The signature page must be a separate page and include an approval block (signature/date) for the Director, OHC.

C. Upon execution of the agreement, the bureau or office headquarters labor relations office, or local labor relations office, must submit to OHC-Labor Relations the executed agreement (signed and dated by the parties to the contract to include electronic signatures where applicable) for review **within three business days** of contract execution. This submission must include complete contact information for both the management and union representatives (generally the chief negotiators). A copy of the executed agreement must also be sent to the bureau or office headquarters labor relations office, as appropriate.

D. At the same time the agreement is submitted for agency head review, but no later than the expiration of the agency head review period, the bureau or office headquarters Human Capital Officer, or his/her designee, **must** certify via memorandum to the Director, OHC (attn: OHC-Labor Relations) that an appropriate human resources/human capital management official has

reviewed the agreement. The memorandum must note any areas of concern with regard to negotiability issues, or recommend the agreement be approved if no concerns were identified.

E. After receipt of the agreement for agency head review, OHC-Labor Relations will provide a copy of the executed agreement, along with a copy of the memorandum referenced in section 6.D., to SOL/ELLU for legal sufficiency review, as appropriate.

F. OHC-Labor Relations, with input from SOL/ELLU, as appropriate, will complete its review of the executed contract within 30 days of the execution date 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) OHC-Labor Relations will endeavor to notify the parties prior to the expiration of the 30-day review period whenever legal deficiencies are identified in order to provide the parties an opportunity to correct the deficiencies and avoid disapproval. OHC-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.

G. An electronic copy of the approved agreement must be provided to OHC-Labor Relations, within 30 days of approval. This electronic copy ***must be provided in optical character recognition text-readable format and comply with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), with signatures and names of the individuals signing the agreement removed.*** The effective date of the agreement must appear on the cover page of the CBA.

7. Additional Considerations.

A. Where there is no Term CBA in effect (or an existing Term CBA does not cover a matter addressed in the EOs as outlined in this PB), management must comply with the requirements of EOs 13836, 13837 and 13839, as outlined in this PB, immediately. In such cases, management is expected to provide appropriate notice to the labor organization and an opportunity to bargain over the implementation of the changes, as appropriate, on a post-implementation basis.

B. Where an existing Term CBA specifies that future government-wide rules take precedence over its terms before it expires, management must take steps to implement the requirements of EOs 13836, 13837 and 13839, as outlined in this PB, immediately. In such cases, management is expected to provide appropriate notice to the labor organization and an opportunity to bargain over the implementation of the changes, as appropriate, on a post-implementation basis.

C. Where an existing Term CBA allows for mid-term bargaining over certain matters, or contains a reopener clause whereby management can put forth proposals for changes to certain articles in the Term CBA prior to its expiration, management must take steps to reopen the Term CBA and implement requirements of EOs 13836, 13837 and 13839, as outlined in this PB, to the greatest extent practicable.

D. Where an existing Term CBA covers a matter(s) addressed in the EOs as outlined in this PB, and which does not specify that government-wide rules prevail over its terms and/or does not allow for mid-term bargaining, management must notify the union of its intent to reopen and renegotiate the Term CBA at the earliest opportunity, which is normally during the open period of the Term CBA, and terminate any provision inconsistent with law, rule or regulation, as applicable, to include EOs. (See section 5.A.)

8. Inquiries. Any DOI employee or employee representative seeking further information concerning this policy may contact the appropriate servicing human resources office (HRO). Servicing HROs may contact the DOI's Office of Human Capital, Workforce Relations Division concerning questions related to this policy.



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