



Labor-Management Relations Program



COMDTINST M12711.4A
January 2012



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COMMANDANT INSTRUCTION M12711.4A

Subj: LABOR-MANAGEMENT RELATIONS PROGRAM

Ref: (a) Title 5, United States Code Chapter 71

1. PURPOSE. This Manual has the following purposes:
 - a. Transmit U.S. Coast Guard policies and procedures for the Labor-Management Relations Program in accordance with Title VII, Federal Service Labor-Management Relations, Chapter 71 of the Civil Service Reform Act (CSRA) of 1978 (5 U.S.C. Chapter 71).
 - b. Provide for the supplementation of the U.S. Coast Guard's Labor-Management Relations Program through the subsequently issued Departmental Labor-Management Relations Management Directive.
 - c. Provide Coast Guard management with guidance on labor-management relations issues and terminology.
2. ACTION. All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, and chiefs of headquarters staff elements shall comply with the provisions of this Manual. Internet release is authorized.
3. DIRECTIVE AFFECTED. Labor-Management Relations Program, COMDTINST M12711.4 is cancelled.
4. PROCEDURES. No Paper Distribution will be made of this Notice. Official distribution will be made via The Coast Guard Directives (CGDS) DVD. To view this Notice, or other unclassified directives visit the Coast Guard Directives System Intranet site at: <http://cgweb.comdt.uscg.mil/CGDirectives/Welcome.htm>, and CGPortal: <https://cgportal.uscg.mil/delivery/Satellite/CG612>, or the Internet site: <http://www.uscg.mil/directives>.

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5. DELEGATION OF AUTHORITY. The authority of the Commandant for labor-management relations in the Coast Guard is delegated to area and district commanders, commanders of logistics and service centers, commanding officers of Headquarters units, Assistant Commandants for directorates, the Judge Advocate General (TJAG), special staff offices at Headquarters, the Deputy Commandant for Mission Support, the Deputy Commandant for Operations, and the Superintendent of the Coast Guard Academy, subject to limitations imposed by this Manual and its enclosures.
6. RESPONSIBILITIES. Program responsibilities are assigned as follows:
 - a. COMDT (CG-12) is responsible for the following:
 - (1) Monitoring the operation of the program within the Coast Guard;
 - (2) Evaluating the program within the Coast Guard and directing such corrective actions and changes in policies and procedures as are deemed necessary in the interest of the Coast Guard; primary support and operating assistance is provided by COMDT (CG-121);
 - (3) Serving as primary contact with the Department of Homeland Security (DHS) on all matters being referred on behalf of management to the Federal Labor Relations Authority (FLRA), the Federal Service Impasses Panel (FSIP), and the Merit Systems Protection Board (MSPB);
 - (4) Providing Coast Guard policy direction in connection with the impact and implementation of the CSRA of 1978;
 - (5) Making available any assistance as may be necessary;
 - (6) Interpreting regulations issued by the Commandant; and
 - (7) Reviewing all negotiated, renegotiated, or supplemental agreements for appropriate approval authority as set by DHS directives.
 - b. Area and district commanders, commanders of logistics and service centers, commanding officers of Headquarters units, Assistant Commandants for directorates, TJAG, special staff offices at Headquarters, the Deputy Commandant for Mission Support, and the Deputy Commandant for Operations are responsible for the following:
 - (1) Administering the Labor-Management Relations Program within their jurisdictions in keeping with the CSRA of 1978, regulations or outside authority and this Manual;
 - (2) Promoting the importance of training in labor-management relations, negotiated agreements, and contract administration, as required, for management officials and supervisors;
 - (3) Ensuring that civilian employees, in their respective jurisdictions, are apprised of their rights and that no interference, restraint, coercion, or discrimination is practiced to encourage or discourage membership in any labor organization;

- (4) Keeping COMDT (CG-121) advised of significant problems and the progress of the program in coordination with the servicing Command Staff Advisor/Human Resources Specialist;
- (5) Periodically evaluating the operation of their labor-management programs;
- (6) Designating a management representative as a single point of contact to act upon petitions submitted by labor organizations and to provide for orderliness and continuity in dealings between management and union representatives in coordination with the servicing Command Staff Advisor/Human Resources Specialist;
- (7) Submitting to COMDT (CG-121) all labor relations matters to be referred to the Department for approval, coordination, consultation, or information; and
- (8) Advising COMDT (CG-121) in all cases when negotiations with a labor organization are anticipated.

c. Managers and supervisors are responsible for the establishment of effective labor-management relations in all of their dealings with unions and with employees subject to the provisions of the Federal Service Labor-Management Relations Statute.

7. MATTERS TO BE REFERRED TO THE DEPARTMENT. The Department of Homeland Security (DHS) retains the Agency Head Authority to approve all negotiated and renegotiated labor agreements, unless otherwise delegated. Additionally, the Department must be notified immediately of any Unfair Labor Practice charge filed with the Federal Labor Relations Authority (FLRA) or any grievance moved to arbitration where such matter has potential Department wide impact. National consultation rights under 5 U.S.C. §7113 are also retained by the Department.

(This section may be supplemented by additional authorities communicated in the subsequently released Departmental Labor-Management Relations Management Directive).

8. MANAGEMENT BARGAINING TEAM MEMBERS FOR LABOR NEGOTIATIONS.
- a. Due to the increasing complexity surrounding the impact and implementation of the various laws and regulations governing the negotiation and administration of agreements, it has been increasingly clear that a greater expertise is required to ensure that the provisions of Chapter 71 of Title 5, U.S.C., are not violated. 5 U.S.C. Chapter 71 can be accessed at the following link: [US CODE: Title 5, CHAPTER 71—LABOR-MANAGEMENT RELATIONS](http://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-partIII-subpartF-chap71.htm) (<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-partIII-subpartF-chap71.htm>).
 - b. The number of individuals who serve on a management negotiating team will vary according to the particular situation; however, as a general rule, the team should be comprised of three to five management officials, including a representative from the Office of Civilian Human Resources, with one individual designated as the chief negotiator. The chief negotiator should be qualified to speak for the commanding officer of the unit. This individual should be well versed in the operations of the unit and should be familiar with civilian personnel regulations. The chief negotiator should also be aware of any problems which have arisen at

the unit so they may be brought into the negotiations. A member of the civilian personnel staff who is thoroughly familiar with civilian personnel regulations should be given serious consideration for the chief negotiator position since that individual is frequently the best qualified person available. At a minimum, however; a civilian personnel staff member must serve as a team member. It is also highly recommended that at least one individual on the management negotiating team be knowledgeable of the day-to-day operations of the unit.

- c. To ensure that management negotiators are qualified to represent the interests of management during the negotiations of an agreement, final approval of all members of the negotiating team will be made by COMDT (CG-121). The names of selectees must be forwarded to COMDT (CG-121) as far in advance of negotiations as possible with the following information on each candidate:

- (1) Current grade/rank and position or billet to which presently assigned.
- (2) Capacity to which assigned while serving on the negotiating team (i.e., chief negotiator, member, member/technical advisor).
- (3) Brief description of experience in labor-management relations including previous negotiating experience and training.

- d. At a minimum, members of the negotiating team should have attended at least one labor negotiations course; preferably one that included mock negotiations. If no such course is available within the timeframes needed to conduct negotiations, the Chief, Workforce Relations Division (CG-1214), Office of Civilian Human Resources, has the authority to identify alternative training to satisfy this requirement.

9. TRAINING OF SUPERVISORS. Where an agreement has been negotiated with a labor organization, all supervisory personnel who will be supervising employees covered by the agreement, will receive formal training on the provisions of the agreement and their responsibilities in the administration of the agreement. Such training should be completed within sixty (60) days of the effective date of the agreement.

10. TRAINING OF MANAGERS. All supervisors, military and civilian, who supervise employees in an organization represented by a union must, at a minimum, attend one basic labor-management relations training course as soon as possible after assignment to such supervisory position. This labor-management training may be provided as part of a comprehensive supervisory course. The source of the training may be internal or external to the U.S. Coast Guard. COMDT (CG-121) provides labor-management relations training on an annual basis. If an organization would like to have their supervisors trained, a request should be submitted to the servicing Command Staff Advisor or Human Resources Specialist.

11. COMMUNICATION OF LABOR-MANAGEMENT MATTERS. Labor-management matters are often highly sensitive and highly charged matters which have the potential for Coast Guard wide impact. Such matters typically involve technical and time-sensitive responses. Accordingly, the Workforce Relations Division, Office of Civilian Human Resources, must immediately be informed and receive a copy of any Unfair Labor Practice charges, demands/requests to bargain, negotiated grievances, notices to invoke arbitration, exceptions to arbitration awards, and union requests for information. Additionally, responses to such labor-management matters must be

coordinated with the Workforce Relations Division, via the servicing Command Staff Advisor/Human Resources Specialist prior to release. This includes the coordination of any Memoranda of Agreement (MOA) or Memoranda of Understanding (MOU) entered into by management prior to signature.

12. POLICIES AND PROCEDURES FOR RECORDING OFFICIAL TIME FOR REPRESENTATIONAL FUNCTIONS. The recording of official time used by bargaining unit representatives shall be in accordance with National Finance Center (NFC) and WebTA procedures.

13. SPECIAL ATTENTION.

- a. Extreme care must be exercised in reaching agreements with labor organizations. This applies not only to term and mid-term bargaining but also in any other dealings where management and the union formally agree to a course of action, such as MOUs or MOAs. Prior to reaching a formal agreement with a union, chief negotiators are responsible for ensuring that the provisions of such agreements are not in conflict with either a Departmental or Coast Guard policy or issuance, unless a formal written waiver of such policy/issuance has been obtained prior to finalizing the agreement.
- b. During the course of negotiations, all declarations of non-negotiability and requests for assistance from the Federal Mediation and Conciliation Service (FMCS) will be coordinated through the Workforce Relations Division, Office of Civilian Human Resources. The services of the Federal Service Impasses Panel (FSIP) will not be invoked by the management negotiating team without prior authorization from the Workforce Relations Division.
- c. In accordance with 5 U.S.C. §7114 and this Manual, formal agreements, both term and mid-term, must be submitted to the Department approval authority, via the Workforce Relations Division. Agreements that do not comply with applicable law and regulation will be disapproved by the Department. Therefore, it is critical that special attention be given to proposed agreement provisions during the course of negotiations to ensure compliance with law and regulation. An agreement must be approved or disapproved within 30 calendar days of the agreement's execution (signing of the contract). This time limit cannot be extended or waived. Therefore the short timeframe mandates that all such agreements be submitted electronically to the Workforce Relations Division immediately upon execution. In the interest of time, draft copies of agreements should also be provided electronically to the Workforce Relations Division upon completion but prior to execution. Upon approval of the agreement, all negotiation notes, records, signed/initiated provisions, and any other applicable documentation must be forwarded to the Workforce Relations Division for maintenance as the historical record of the agreement which will be maintained in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.12 (series).
- d. Internal management deliberations and discussions are just that – internal to management and are not intended for communication outside of the management ranks. Caution should be applied when discussing such matters.

14. DISCLAIMER. This document is intended to provide operational requirements for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.

15. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.

a. The development of this Manual and the general policies contained within it have been thoroughly reviewed by the originating office in conjunction with the Office of Environmental Management, and are categorically excluded (CE) under current USCG CE #1 from further environmental analysis, in accordance with Section 2.B.2. and Figure 2-1 of the National Environmental Policy Act Implementing Procedures for Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series). Because this Manual contains guidance on, and provisions for, routine personnel, fiscal and administrative activities, actions, procedures and policies which clearly do not have any environmental impacts, Coast Guard categorical exclusion #1 is appropriate.

b. This directive will not have any of the following: significant cumulative impacts on human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this Manual must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), DHS and Coast Guard NEPA policy, and compliance with all other environmental mandates. Due to the administrative and procedural nature of this Manual, and the environmental guidance provided within it for compliance with all applicable environmental laws prior to promulgating any directive, all applicable environmental considerations are addressed appropriately in this Manual.

16. FORMS/REPORTS. None.

CURTIS B. ODOM /s/
Director of Personnel Management

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CHAPTER 1. MANAGEMENT GUIDANCE ON THE LABOR-MANAGEMENT RELATIONS PROGRAM

A. Introduction. Supervisors and managers make decisions on a daily basis that affect their employees. Since the labor relations program can be confusing and challenging, and given that the Coast Guard has a number of bargaining units that are represented by various unions, with varying contract provisions, it is imperative that you have an understanding of your labor relations responsibilities. This guide is designed to help you in meeting the challenge and providing answers to matters encountered when making decisions that impact the working conditions of bargaining unit employees. While this guide is intended to provide you with some basic information related to the Labor-Management Relations Program which is governed by the Federal Services Labor Management Relations Statute (5 USC 71), your Command Staff Advisor/Human Resources Specialist and the staff of the Workforce Relations Division, Office of Civilian Human Resources are available and should be consulted early in order to obtain assistance when dealing with union issues, workplace changes and meeting your labor obligations.

B. Understanding the Bargaining Unit.

1. A bargaining unit is a group of employees who have a common interest and are represented by a labor organization in their dealings with Coast Guard management concerning conditions of employment. Employees do not have to be dues paying members of a union in order to be covered by or represented by the union. When the Federal Labor Relations Authority (FLRA) certifies a particular union as the representative of a bargaining unit, it becomes the exclusive representative for the defined unit. This official certification is issued after the union petitions to represent the employees and normally after the majority of the employees vote for representation. Typically, a bargaining unit is made up of all positions in the particular organization except for the following:
 - a. supervisors;
 - b. management officials;
 - c. confidential employees; or
 - d. professional employees, unless a majority of the professional employees vote to be included in the unit.
 - e. employees engaged in:
 - (1) personnel work other than in a purely clerical capacity;
 - (2) investigations directly affecting the Coast Guard's internal security;
 - (3) administering the provisions of Title 5, Chapter 71; or
 - (4) work directly affecting national security.

2. Whether a bargaining unit covers a particular position can be determined by the Bargaining Unit Status (BUS) code of the position. The BUS code is a unique number that is assigned by the Office of Personnel Management to each Federal bargaining unit certified by the Federal Labor Relations Authority. The code is used to identify position inclusion, exclusion or eligibility as follows:
 - a. A BUS code of **8888** denotes positions that are always excluded by statute from coverage in a bargaining unit.
 - b. A BUS code of **7777** denotes positions that are eligible for coverage, but no bargaining unit has been established.
 - c. Any other 4-digit number identifies the particular unit to which the position belongs; each bargaining unit is assigned a unique code by the Office of Personnel Management.
3. An employee's BUS code is always reflected in block 37 of the SF-50 – Notification of Personnel Action. Again, it is important to note that in the Federal government, bargaining unit coverage is not dependent upon being a dues paying member of the union. If an employee occupies a represented position, the employee is entitled to union representation and the associated rights regardless of whether he/she pays union dues.
4. If you believe that the BUS code of a particular position is incorrect or if you have questions regarding an employee's bargaining unit status, contact your servicing Command Staff Advisor/Human Resources Specialist.
5. BUS codes currently established for the Coast Guard are as follows:

3456	IAFF Local F-298, TRACEN Petaluma (firefighters)
3458	AFGE Local 3655, Academy (faculty)
3459	NAGE R1-145, Academy (non-faculty)
3464	SEIU, 8 th District (New Orleans only)
3465	NFFE FL-513, ISC New Orleans (Industrial Division)
3472	NAGE R1-91, Sector Northern New England
3473	BAMTC, Baltimore Yard and ELC (wage grade)
3477	NAGE R1-129, 1 st District
3480	NFFE Local 2054, ISC St. Louis
3482	NAGE R2-59, TRACEN Cape May
3485	IAMAW Local 2203, ALC, ATTC, Support Center Elizabeth City
3486	NFFE Local 73, 9 th District
3487	NFFE FD-1, Local 1164, CEU Providence
3488	BPAT Local 1901, Base Charleston
3490	TVMTC, ISC Portsmouth
3493	NAGE R4-30, TRACEN Yorktown
3494	IBB, Puget Sound VTS
3496	NFFE Local 3, Group Milwaukee
3575	AFGE Council 120 (consolidated unit covering multiple locals Coast Guard-wide)

C. Employee Rights and Responsibilities. Employees in the Federal service have the statutory right to:

1. form, join, or assist any labor organization;
2. refrain from forming, joining, or assisting any labor organization;
3. act as a representative for a labor organization (steward, shop steward, chief steward, council president, etc.);
4. present the views of the labor organization as the representative to the agency head, other officials of the Executive Branch or to Congress;
5. engage in collective bargaining with respect to conditions of employment – through representatives chosen by employees;
6. exercise these rights without fear of penalty or reprisal.

D. Union Rights and Responsibilities.

1. Once certified by the FLRA, the union serves as the exclusive representative of the employees in the bargaining unit and has the right to:
 - a. act for and negotiate collective bargaining agreements for all employees in the unit;
 - b. be given the opportunity to be represented at any formal discussion including grievance meetings (see section on formal discussions for further information);
 - c. be given the opportunity to be represented at any meeting with unit employees relative to an investigation if the employee reasonably believes that the meeting could result in discipline and the employee requests representation (see section on Investigative “Weingarten” Meetings for further information);
 - d. be provided advance notice of any proposed changes to established conditions of employment and an opportunity to negotiate over these changes absent any clear and unmistakable waiver of this right.
2. It is important to note that in providing advance notice to a union representative who is also a Coast Guard employee, receipt of a general notice provided to that individual as an employee (such as an announcement of an upcoming all hands meeting sent out to all employees) does not constitute the advance notification required in the individual’s role as a union representative.
3. The union has the responsibility to represent all bargaining unit employees, without discrimination and regardless of whether the employee voluntarily elects to become a union member (i.e., elects to pay union membership dues). The union also has the responsibility to negotiate with management in “good faith” to determine conditions of employment.

4. Once certified as the exclusive representative of bargaining unit employees, the union's right to be present does not depend on an individual bargaining unit member's desire to have the union present or not. The union must be notified of and allowed to attend if it wishes to do so as it is responsible for representing the rights and interests of all bargaining unit employees.

E. Management Rights and Responsibilities.

1. Under the Statute, management reserves the right to:
 - a. determine the mission, budget, organization, number of employees, and internal security practices;
 - b. hire, assign, direct, lay-off, and retain employees;
 - c. suspend, remove, reduce in grade or pay, or discipline employees;
 - d. assign work, make determinations with respect to contracting out, and determine the personnel by which operations will be conducted;
 - e. select and appoint employees from appropriate resources; and,
 - f. take whatever actions may be necessary to carry out the agency mission during emergencies.
2. Again, these are management's rights and the union cannot negotiate on any of these rights. However, the union can negotiate over the procedures used to implement these changes and on the arrangements affecting bargaining unit employees. This is what is typically referred to as 'impact and implementation' or I&I bargaining. The union can also negotiate on the appropriate arrangement for bargaining unit employees who are adversely affected by management decisions – in other words, if the union's proposal is intended to ameliorate the adverse effects of the exercise of a management right, then management may be required to negotiate over that proposal. In looking at such a proposal the FLRA applies a balancing test in which it weighs the extent to which the proposal improves the expected adverse affects against the extent to which it interferes with the management right and makes a determination as to whether or not the proposal excessively interferes with management's rights. If it is determined that it does excessively interfere, then the proposal is not an "appropriate arrangement" and therefore, non-negotiable.
3. In addition to management's reserved rights, the Statute sets forth "permissive rights" that management may elect (but are not required) to negotiate over:
 - a. the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty.
 - b. the technology, methods, and means of performing work.

- (1) *technology* is the technical method used in accomplishing or furthering the performance of the agency's work.
- (2) *method* is the way in which, or how, an agency performs its work.
- (3) *means* is any instrumentality including any agent, tool, device, measure, plan, or policy used by the agency for accomplishing or furthering the performance of its work.

F. Executive Order Creating Labor-Management Forums.

1. On December 9, 2009, the President signed Executive Order 13522, Creating Labor-Management Forums to Improve Delivery of Government Services, the purpose of which is to establish a cooperative and productive form of labor-management relations throughout the Executive Branch of the Government. This Order establishes the National Council on Federal Labor-Management Relations, co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget. Membership of this Council is made up from various senior level officials from Federal agencies and labor organizations. The responsibilities and functions of this Council include:
 - a. supporting the creation of department or agency-level labor-management forums and promoting partnership efforts between labor and management in the executive branch;
 - b. developing suggested measurements and metrics for the evaluation of the effectiveness of the Council and department or agency labor-management forums in order to promote consistent, appropriate and administratively efficient measurement and evaluation processes across departments and agencies;
 - c. collecting and disseminating information about, and providing guidance on, labor-management relations improvement efforts in the executive branch, including results achieved;
 - d. utilizing the expertise of individuals both within and outside the Federal Government to foster successful labor-management relations, including through training of department and agency personnel in methods of dispute resolution and cooperative methods of labor-management relations;
 - e. developing recommendations for innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests;
 - f. serving as a venue for addressing systemic failures of department or agency-level forums established pursuant to the order; and
 - g. providing recommendations to the President for the implementation of several pilot programs within the executive branch, described in section 4 of the order, for bargaining over subjects set forth in 5 U.S.C. 7106(b)(1).

2. The Executive Order also requires the implementation of labor-management forums throughout the Executive Branch to:
 - a. help identify problems and propose solutions to better serve the public and agency missions;
 - b. allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106;
 - c. provide adequate information on such matters expeditiously to union representatives where not prohibited by law;
 - d. make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b)(1), through discussions in its labor-management forums; and,
 - e. evaluate and document, in consultation with union representatives and consistent with the purposes of the order and any further guidance provided by the Council, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the labor-management forums.
3. Within Coast Guard, labor-management forums can be created using labor-management committees or councils at the level of recognition, and at other appropriate levels agreed to by labor and management, or by adapting existing councils or committees. Forums should identify problems and propose solutions to better serve the public and agency mission. Membership should include an equal number of management and union officials and may also include a representative from Civilian Human Resources (Command Staff Advisor or Human Resources Specialist).
4. The purpose of the forums is to create a non-adversarial forum to discuss workplace issues in order to promote satisfactory labor relations and improve productivity and efficiency. Forums should work collaboratively to jointly devise solutions rather than adhering to traditional bargaining procedures. Through the forums, management should allow employees and union pre-decisional involvement to the fullest extent practicable on all workplace matters without regard to negotiability. Coast Guard forums are encouraged to define pre-decisional involvement and gain consensus on how that process will occur.
5. The Coast Guard highly encourages the use of charters to jointly establish forum procedures (e.g., place, time, goals, composition, etc., of the forum). A charter will set a foundation for the team and define the purpose, logistics and expected outcomes.
6. The Executive Order requires forums to identify issues which the group seeks to resolve, and develop measurements and metrics for evaluation of the effectiveness of the agency's labor-management forums in order to promote a consistent, appropriate and administratively efficient measurement and evaluation process across agencies. Each forum established will need to identify issues to resolve and develop one metric each for the following three areas:

- a. mission accomplishment and service quality;
 - b. employee satisfaction/engagement; and
 - c. labor-management relationships.
7. The three metrics can be used to measure one issue or three different issues. Forums will be asked to adhere to specific reporting requirements from DHS regarding their metrics progress.

G. Making Changes in Conditions of Employment.

1. Ongoing workplace practices are generally referred to as “conditions of employment”. Once established, such policies or practices may not be changed without providing the union reasonable advance notice and an opportunity to bargain. When management wants to make a change that affects the conditions of employment of bargaining unit employees, the union’s right to bargain comes into play. If, for example, you are planning to add or reduce the number of employees, reorganize the way work is done, adopt new or different equipment, change or improve operating methods, relocate to new office space, adopt a new flextime schedule, etc., you will need to understand your labor relations obligation. Changes such as those listed above are perfect examples that invite the union’s right to bargain. Failing to recognize the union’s right could result in an Unfair Labor Practice charge, which is discussed in more detail in a later section. As addressed under the union’s rights section, the statute says that when management is going to change the conditions of employment for employees in the bargaining unit, the union has the right to represent the interests of the bargaining unit employees. So, if a change is planned, management has an obligation to provide the union with reasonable and adequate advance notice of the change and has a duty to bargain with the union as appropriate. Therefore, you will need to factor more time into your plans for making a change to allow the bargaining process to run its course. Let’s say for instance, you plan to move a bargaining unit employee from an office space to a cubicle by the end of the week. Unfortunately, that is not enough time to notify the union and allow the union an opportunity to bargain over the impact and implementation of that change. A majority of our bargaining units have contracts or Memoranda of Understanding that address the required advance notice periods associated with changes being proposed, so be sure to check your local agreement.
2. What is a Condition of Employment? A condition of employment is a personnel policy, practice or matter that affects the working conditions of employees. Personnel policies can range from leave policies, established dress codes, merit promotion policies, discipline procedures, etc. This includes written rules for managing employees. Personnel practices are often unwritten rules such as swapping weekend overtime assignments, employee’s use of coffee mess, length of lunch periods, or anything that has become a “past practice” if followed consistently for a long period of time, with the knowledge and acceptance of union and management. Other conditions of an employee’s work environment include things such as lights, air-conditioning, parking, safety, cafeteria, etc. Changes to any of these working conditions are subject to union notification/bargaining obligations. A condition of

employment may impact one bargaining unit employee or a large group of bargaining unit employees; nevertheless we still must adhere to our labor obligations. Contact your servicing Command Staff Advisor/Human Resources Specialist to assist you with identifying changes in working conditions and to advise and assist you with fulfilling your labor obligations.

3. What about this duty to bargain? If your change falls within a protected management right (i.e. hire, layoff, assign work, determining budget or organization, contracting out, internal security practices) you are not required to bargain with the union over whether or not this change will take place. You are however, obligated to bargain with the union over the impact and implementation (I&I) of this change, if the union elects to do so. Changes that are not covered by a management right, e.g., dress codes, elimination of rest periods, change in leave approval procedures, elimination of a coffee pot, etc. means that the substance of the proposed change itself is negotiable with the union. Therefore, the union could possibly throw a roadblock into your plans to effect such a change. In either case (whether you are required to bargain over the impact and implementation of a change or the substance of the change itself) negotiations must be completed before the change can be made.
4. Below are examples of changes that require notice and which are potentially bargainable. **Please note that this list is NOT all inclusive and that many more types of changes are possible that would require advance notice.**
 - a. New or revised work place instructions or procedures (includes Commandant Instructions, ALCOASTS, ALCGCIVs, Standard Operating Procedures, etc.).
 - b. Changes to work hours or work schedules.
 - c. New time and attendance procedures.
 - d. New security procedures.
 - e. New ways of assigning or approving overtime.
 - f. New work accountability or recording methods (work logs, status reports, etc.).
 - g. Revisions to benefits or privileges associated with employees' employment.
 - h. New training requirements or certifications.
 - i. New procedures for details or temporary promotions.
 - j. Reorganization, reassignments, reductions in force, furloughs, or transfers of function.
 - k. Changes to work locations, whether to a new geographical area, within the current geographical area or even new seating arrangements or office space.
 - l. Changes to parking spaces or parking opportunities.

- m. Changes to food availability such as cafeterias, snack bars, vending machines.
 - n. Elimination of employer provided benefits such as fitness centers, bottled water, etc.
 - o. Changes to pay policies.
 - p. Changes to how employee personal data is maintained, such as Official Personnel Folders (OPFs).
 - q. Any change that will result in the employee receiving less money or getting more work.
 - r. Changes to a disciplinary policy.
 - s. Changes to leave requesting or reporting procedures.
 - t. Changes to geographically dispersed work situation where the supervisor is no longer co-located.
 - u. New (or updates to) technology such as new computers, new systems, beepers, etc.
5. Union Bypass:
- a. A “union bypass” is an issue that takes place more frequently in the workplace than probably any other violation of the statute. In labor-management terms, a ‘bypass’ means that management has disregarded the union’s exclusive representational role and elected to deal directly with bargaining unit employees on matters pertaining to a grievance, employee working conditions, or other issues related to the labor-management relationship.
 - b. Once employees have elected to be represented by a union, the union becomes the exclusive representative for those employees. That exclusive representational role limits management’s ability to deal directly with represented employees and instead requires that management deal with the union to resolve grievances and to negotiate workplace resolutions. For example, if management needs to implement new work schedules for employees represented by a union, management must notify the union of the proposed changes and bargain with the union over appropriate proposals related to the impact and implementation of those new schedules before any changes can be implemented. Even if management believes employee issues or concerns with the schedules could be worked out more easily and more quickly by dealing directly with employees and leaving the union out of the picture, management cannot bypass the union without committing a ULP. Or let’s take a situation where an employee represented by the union files a grievance over the annual performance appraisal received. The supervisor might believe that he/she could resolve the grievance more efficiently by sitting down alone with the employee and working out the dispute. In the supervisor’s opinion, extra participants, such as the union, would only elevate the conflict. Although the supervisor’s desired

route might seem more effective, it would constitute a violation of the Federal Service Labor-Management Statute and likely land a bypass ULP.

- c. It isn't always calculated efforts by management to avoid dealing with the union that result in union bypass problems. Sometimes it is the well-intentioned efforts by management to give employees a voice that creates the problem. Once employees elect an exclusive representative, that representative becomes their voice. In some cases, the institutional interest of the union takes precedence over individual employee interests. In any event, management cannot elect to circumvent dealing with the union and decide to deal directly with the employees without operating in peril. One place where management must proceed with caution is with employee groups designed to communicate issues to management, such as Civilian Advisory Boards. If the Board is comprised of employees that are represented by a union, management must be careful not to negotiate directly with Board members over conditions of employment. Management must also ensure that the union is still notified and allowed to bargain over any changes to personnel policies, practices, or matters affecting working conditions that result from issues brought to management via the Board – even if the union is represented on the Board or had attended the meeting.
- d. So does the prohibition on union bypasses mean you can't talk to your represented employees about the work or solicit their opinions on workplace matters? Certainly not - but it does mean that you must recognize the union's role in the workplace; you must acknowledge that the union serves as the employees' advocate; and you must negotiate changes to conditions of employment with the union rather than with the represented employees.
- e. Making a change is not always easy when bargaining unit employees are affected. Although this may seem time consuming, we must follow the statute. Therefore, whenever you are planning to make a change, contact your servicing Command Staff Advisor or Human Resources Specialist for advice and guidance as early as you can to assist you with proper notification to the union regarding your proposed change(s). Your Command Staff Advisor/Human Resources Specialist will also help you with the negotiation process associated with the implementation of these changes.

H. Official Time for Union Representatives.

1. Official time is duty time that is granted to union representatives to perform union representational functions, without charge to leave or loss of pay – when the employee would otherwise be in a duty status. Time spent in representational duties is considered to be hours of work.
2. Official time can be permitted for representational functions such as:
 - a. contract or mid-term negotiations;
 - b. representing employees who file grievances;

- c. proceedings before the Federal Labor Relations Authority.
 3. Official time is not permitted for conducting the internal business of the union, such as:
 - a. soliciting membership;
 - b. collecting union dues;
 - c. distribution of union literature;
 - d. campaigning for and elections of union officials;
 - e. any matters relating to the internal management and structure of the union.
 4. Official time is also not typically granted for attendance by union officials at labor organization meetings, conferences and training sessions UNLESS the subject matters addressed at the sessions are deemed to be of mutual concern to management as well as the union. Contact your servicing Command Staff Advisor/Human Resources Specialist to address matters that meet the “mutual benefit” criteria.
 5. Overtime for official time is not permitted as time spent performing representational business outside an employee’s normal workday is not considered performance of hours of work within the meaning of the pay regulations. In addition, time spent in representational functions is for the union and is not for the primary benefit of the government as an employer. The exception to the overtime prohibition for representational functions provides that if an employee/ representative is already on overtime for the primary benefit of the government, and an issue arises, official time can be granted while on overtime.
 6. Check your local contract for provisions addressing the process for requesting official time, including the use of any established form that may need to be completed. Almost all contracts will contain provisions that require that the union representative request and receive advance approval from the first level supervisor before taking official time for representational purposes.
- I. Grievances/Arbitration.
1. A grievance is a complaint:
 - a. by any employee concerning any matter relating to his/her employment;
 - b. by any labor organization concerning any matter relating to the employment of an employee;
 - c. by any employee, labor organization, or agency concerning the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

- d. any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.
2. There are certain matters excluded from the grievance process:
 - a. any claimed violation of 5 U.S.C. 7321 – related to prohibited political activities;
 - b. retirement, life insurance, or health insurance;
 - c. a suspension or removal taken for national security purposes under 5 U.S.C. 7532;
 - d. any examination, certification, or appointment; or
 - e. the classification of any position that does not result in the reduction in grade or pay of an employee.
 3. Individual contracts may also address additional matters that through the negotiation process have been excluded from the grievance procedure – such as travel claims, informal discipline (letters of caution, admonishments, letters of requirement) – so be sure to check your local contract for applicability whenever you are in receipt of a grievance from either an employee or the union on behalf of an employee(s).
 4. Individual contracts will also address the specific process to be followed and the timeframes involved in the process. Typical grievance processes will involve a series of steps during which the individual and/or union are provided the opportunity to present their issue or concern to varying levels of management. During these steps, meetings with the individual/representative may be an option – or they may be required. The purpose of the meeting is to provide the grievant with an opportunity to present their concern and allow the deciding official the opportunity to clarify the matter. *It is important that the deciding official offer no resolution during the meeting.* Make sure that you check the facts of the matter, determine whether the issue is timely and grievable, check the contract for any applicable provisions governing the issue, work with your Command Staff Advisor/HR Specialist on what case law might say concerning the matter raised and what other grievances on the same or similar issues might have resulted in. Please note that even though a bargaining unit employee may not have identified a union representative as his/her representative in the grievance process, the union has a statutory right to be present at any grievance meeting. Therefore, during the grievance process, if you meet with a bargaining unit employee to discuss the grievance, ensure that you invite the union to be present as well whether or not the union has been identified as the representative. Notes should be taken during the grievance meeting and should be documented in the grievance file.
 5. Just as it is important for the union/employee to file a grievance in a timely manner, it is also important that you meet the timeframes established in the negotiated grievance process in issuing your decision. Once you have completed your investigation of the matter(s) raised

and made your determination, your Command Staff Advisor/HR Specialist will work with you to draft your grievance decision. Failure to do so will typically enable the grievant to raise the grievance to the next higher step in the grievance process.

6. Part of the statutory requirement for negotiated grievance procedures is the provision for a final and binding arbitration of a grievance that is not resolved during the grievance process. While either party (i.e., the union or the agency – not the employee) can invoke arbitration, it is typically done so by the union when the grievance is not resolved to their satisfaction. Arbitration involves the review – during what amounts to a hearing – by a third party neutral selected through a process outlined in the contract. Typically, the costs associated with the arbitration are borne equally by the agency and the union. The decision of the arbitrator is final and binding on the parties.

J. Unfair Labor Practice Charges.

1. An unfair labor practice (ULP) charge is an alleged violation of a protected right under the statute (5 U.S.C. Chapter 71). Although a ULP can be filed by an employee, by the union or by management, most ULP charges are filed against management by the union. In fact, rarely seen are ULP charges filed by management against the union. ULPs are filed with the Federal Labor Relations Authority (FLRA) and can be filed anytime within six months of the date the filing party became aware of the alleged violation of the labor law.
2. ULP charges can result from various actions as listed below, but the most common ones seen result from such activity as failing to provide notice and an opportunity to bargain over a change in working conditions prior to implementation, discussing or notifying bargaining unit employees of a proposed change prior to union notification (union bypass), and refusing an employee their right to representation upon request during an investigatory meeting. Other management ULPs could result from actions such as:
 - a. discipline in retaliation for union representation activity;
 - b. interrogating unit employees on union activity;
 - c. failing to promote a representative based on union activity;
 - d. campaigning for a specific individual as a union representative;
 - e. retaliating or threatening to retaliate in any way for an individual's union activity;
 - f. refusing to bargain over a negotiable issue;
 - g. refusing to provide a representative required official time;
 - h. enforcing a rule or regulation that conflicts with a collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed;

- i. failing to provide the required notification and an opportunity to be present at formal discussions;
 - j. failing to provide requested information;
 - k. showing favoritism towards or granting special benefits to one union over another union.
3. Unions also may be charged with a ULP for such matters as:
 - a. expelling a member from the union for filing a ULP against the union;
 - b. suggesting to employees that they must become dues paying members in order to receive representation;
 - c. encouraging agency discipline of an individual for anti-union activities;
 - d. refusing to represent an individual for disciplinary reasons;
 - e. failing to send representatives to the negotiating table who have authority to commit for the union;
 - f. refusing to meet with the mediator on issues at impasse;
 - g. calling, condoning, or participating in a strike, work stoppage, or slowdown.
4. Once a ULP charge has been filed, the FLRA is responsible for determining whether in fact, one has been committed and what the remedy will be. In investigating the matter, the process is split in two parts. During the first phase, a representative of the FLRA regional office will independently investigate the matter to see if there are sufficient grounds to issue a complaint. This phase typically involves discussions with responsible management officials, coordinated through the staff of the Workforce Relations Division, and submission of agency documents/evidence relevant to the issue. If sufficient evidence does not exist, the FLRA will dismiss the charge and drop the matter. The decision to dismiss the charge is reviewable by the FLRA general counsel. On the other hand, if the representative finds that sufficient evidence exists to require a complete investigation, a formal complaint is issued and a hearing is scheduled. The purpose of the hearing is to develop facts for the FLRA to determine whether a ULP has actually been committed.
5. If the Coast Guard is found guilty of committing a ULP, the FLRA has the authority to prescribe whatever remedy is necessary to correct the ULP. Remedies may include rescinding or revoking whatever management action occurred to cause the ULP and requiring management to go back to the way things were before the commission of the ULP (a “status quo ante” decision). This could involve the rescinding of a personnel action and making the impacted employee(s) whole. Depending on what the issue is, such a decision could be quite costly and labor intensive. For example, if management were to move employees from one location to another within a building, between buildings, or even across state lines without

first completing negotiations over the move with the applicable union(s), the FLRA could require that the move be totally undone and all employees moved back to their original locations until the completion of the required negotiations. Another example, suppose management implemented some construction in a worksite in which bargaining unit employees worked that impacted their working conditions – without bargaining over the impact of that construction; the FLRA could issue a “status quo ante” decision requiring the agency to undo – or at least halt – the construction until all labor obligations were met. Again, it is important to understand that failing to meet our labor obligations could be quite costly and cause even further delays in implementing desired management actions/changes. In addition, most remedies generally result in the posting of a notice to employees indicating what was done wrong as well as a statement that the guilty party will not take such actions in the future.

K. Information Requests.

1. The statute requires the agency to furnish to the union, upon request (and to the extent not prohibited by law) information:
 - a. which is normally maintained by the agency in the regular course of business;
 - b. which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining; and
 - c. which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
2. When requesting information under 5 U.S.C. 7114(b)(4), the union must establish a “particularized need” for the information. That is, the union must articulate, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union’s representational responsibilities. This requirement is not satisfied merely by showing that the requested information is or would be relevant or useful to a union – instead the union must establish that the requested information is required in order for the union to adequately represent its members. If you get an information request from the union that does not indicate why the information is needed, it is not sufficient to just refuse to provide the information. Work with your Command Staff Advisor/Human Resources Specialist to explain to the union what is required from them in order for you to respond appropriately to their request.
3. Further, once the particularized need is established, the fact that the information that is being requested will be burdensome to pull together or is available through some other means (such as through a link on a Coast Guard website) does not relieve you from the obligation to provide the information. It is important to recognize that information requests received from a union are considered to be filed with the agency, i.e., the Coast Guard. Just because it is actually received in one office/command that may not have all of the information requested, does not relieve the Coast Guard’s obligation to obtain and provide the information. Again,

work with your Command Staff Advisor/Human Resources Specialist in obtaining and providing the appropriate information in response to an information request which, unlike Freedom of Information Act (FOIA) requests, is provided to the union free of charge.

L. Formal Discussions.

1. As part of their representational rights, a union has the right to be present to represent bargaining unit employees at formal discussions. But what is a formal discussion? A formal discussion is a discussion between one or more representatives of the agency and one or more employees in the unit concerning any grievance or any personnel policy or practice or other general condition of employment. Keep in mind that a formal EEO complaint processed under 29 CFR Part 1514 or other statutory appeal procedures constitutes a 'grievance'; therefore, any meetings or discussions (interviews, settlement discussions, mediation, etc.) related to such complaints that rise to the level of "formal" require advance union notification. Criteria to be considered in determining whether a discussion or meeting rises to the level of "formal" are:
 - a. whether the individual who is holding the discussion is merely a first-level supervisor, or is higher in the management chain;
 - b. whether any other management representative will be in attendance;
 - c. where the meeting will take place;
 - d. how long the meeting is expected to last;
 - e. how the meeting is called (i.e., is there a formal advance written notice or was it more spontaneous/informal);
 - f. whether there will be a formal agenda established for the meeting;
 - g. whether the employees' attendance is mandatory; or
 - h. the manner in which the meeting will be conducted (whether notes will be taken, whether the employee's identity and comments will be noted/transcribed, etc.).
2. What is the union's role during a formal discussion? The opportunity to be present – which requires that management provide the union reasonable advance notice of the meeting (when, where, topics of discussion) – means more than merely the right to be in attendance as an observer at the meeting. The right to be present means that the union representative has the right to comment, speak and make statements concerning the topics of conversation being discussed. The right of the union to be present during formal meetings is based on the statutory acknowledgment that unions are in the public interest and therefore have the right to represent the views of the employees and the union. It does not though, mean that the representative can take charge of, usurp or disrupt the meeting.

3. The notice requirement is not eliminated because one of the employees who will attend the meeting as an employee is also a union representative. Separate union notice must still be provided in advance of the notice going out to all employees. The union has the right to determine who will attend the meeting on their behalf and can even elect to not attend at all. You do not have to ensure that the union is present at the meeting, only that you've provided the required notice in a reasonable amount of time to allow the opportunity to be present. While there are some limited occasions where a formal meeting may need to be called at the last minute, resulting in a last minute notice to the union representative – notices provided on the day of or even the day before the meeting should be the exception, not the rule. Keep in mind that not all union representatives are employed in the same locale as the bargaining unit employees represented and so notice should be sent in sufficient time to allow the representative to make arrangements to be present or to have another representative in attendance. Although written/e-mail notice is not required, it is the most preferred method of union notification and creates documentation that the required notice was provided.
4. What isn't a formal discussion? Discussions concerning existing work assignments/procedures, performance appraisals, progress reviews, performance counseling and counseling on conduct issues are not considered formal discussions.

M. Investigative “Weingarten” Meetings.

1. The union also has the right to be present during an investigative meeting – a meeting involving the examination of a bargaining unit employee by an agency representative in connection with an investigation – when the employee reasonably believes the examination may result in a disciplinary action being taken AND the employee requests such representation. These meetings are often times referred to as “Weingarten Meetings” and the right to representation referred to as “Weingarten Rights”.
2. Whenever an employee invokes their right to representation during an investigative meeting, you need to either temporarily stop the discussion to allow the representative the opportunity to be present, reschedule the meeting within a reasonable period of time to allow the representative to be present, or continue your investigation through other means without involving the interview of the bargaining unit employee. Another option that is available, but its use should be considered carefully before proceeding, is to ensure the employee that no disciplinary action will result from the meeting – and continue the meeting without representation. Although in most cases management is not required to inform employees in advance of their “Weingarten Rights”, there may be contract language that addresses this matter. Please check your local contract to determine if there are any other specific requirements – like requiring advance notification prior to questioning – addressed in the contract. If so, ensure that you follow the contract requirements accordingly.
3. The union's role during a “Weingarten” meeting is to ask relevant questions and assist the employee in answering questions presented by clarifying facts or bringing forth favorable information. The union cannot, however, answer questions for the employee (i.e., you can require the employee to provide you with their account of the incident), break up the meeting, or prevent you from carrying out your investigation. Nor do you have any obligation to bargain with the union during an investigatory meeting.

4. The Workforce Relations Division, CG-1214, provides an annual notification to Coast Guard employees and supervisors regarding the “Weingarten Rights”.

N. Selecting a Bargaining Unit Employee as a Team Member. (The following information was developed and provided in response to questions raised regarding bargaining unit employees serving on the various transformation/modernization teams. However, the concept holds true outside of the realm of modernization as well - the foundation for this information is applicable case law, 5 U.S.C. Chapter 71, and guidance promulgated by the Federal Labor Relations Authority .)

1. As part of the Coast Guard’s current transformation effort, many teams and sub-teams have been established throughout the Coast Guard. The mission of these teams has generally been to assess current organizational structures and to determine more effective structures in the context of the goals set forth by the Commandant. Although the basic goal of these teams is pretty clear, the day to day operational roles and responsibilities of the teams and the team members is less clear. Additionally, it is becoming more and more difficult to keep a current list of emerging teams and appointed team members.
2. In placing bargaining unit employees on teams where reorganizations and other organizationally transformative issues are being considered/evaluated, the Coast Guard potentially commits an Unfair Labor Practice (ULP) charge as a result of direct dealings with employees that bypass the exclusive representative (the union). Below are key considerations that should be reviewed when deciding to include bargaining unit employees on transformation teams or other work groups:
 - a. Management has the right to obtain employee input without the union’s consent and agreement over matters that are technical in nature and concern the job-related functions of the employee. When placing bargaining unit employee on a team to strictly deal with technical matters and job-related functions of the employee, management still must notify the union of the establishment of the team and conduct impact and implementation bargaining if requested.
 - b. Management must be careful to avoid any behavior that appears to be negotiating with bargaining unit employees or trying to “win them over” on issues that management is in conflict with the union on. Management may question employees directly to obtain information, but must do so in a way that does not appear to be bargaining with employees.
 - c. Management can survey employees regarding their opinions on the effectiveness of a process improvement and use that information to make management decisions. However, those management decisions cannot then be negotiated with employees, but instead must be negotiated with the representing union. For example, management surveys employees on how their current office configuration and work schedules help or hinder work processes. Once the data is gathered from the survey, management then identifies work schedule changes and office configurations that management believes will

contribute to process improvements. At this point, management must notify the union of the proposed changes and bargain with the union. Management cannot go back to the employees and attempt to negotiate these changes or try to convince them to support the changes.

- d. Management commits a ULP when dealing directly with bargaining unit employees over matters that are negotiable. The only exception is when the union has agreed through bargaining and a written agreement to allow such direct dealings. The union cannot be forced to bargain this issue. Bargaining away the union's statutory right to serve as an exclusive representative is solely at the election of the union. If the union refuses to bargain over a proposal to waive this right, there is no management recourse, as permissive areas of bargaining cannot be forced to impasse. If the union agrees to waive this right and agrees to bargain, they can put forth proposals that include having a union rep on the team, picking which employee(s) will serve on the team, etc. Since this is a permissive area of bargaining for the union, they can withdraw from bargaining on this issue any time before a signed agreement is in place.
3. If the role of the bargaining unit employee on the team will be to provide technical input or input related to the employee's job functions, then notice should be made to the representing union and impact and implementation bargaining should be conducted as appropriate. If the bargaining unit employee's role is expected to be expanded to discussion/input on negotiable matters, then management will need to approach the union and attempt to get written "buy-in" from the union for an employee participative process. In such case, management should plan for an alternative approach in case the union refuses to bargain on this issue. (Key cases: 29 FLRA No. 06 (Pearl Harbor Naval Shipyard/MTC); 19 FLRA No. 48 (IRS/NTEU); 20 FLRA No. 90 (SSA/AFGE); 19 FLRA No. 121 (U.S. Customs/NTEU).

CHAPTER 2. LABOR RELATIONS TERMINOLOGY

- A. Introduction. The following is a glossary of terms commonly used related to labor relations. This glossary is not a complete listing of all labor relations terms, but by becoming familiar with the terminology listed here managers will have a better understanding of some of the basic labor relations concepts.
- B. Terminology.
1. **Administrative Law Judge (ALJ)**: An individual who conducts hearings and makes initial decisions on behalf of the Federal Labor Relations Authority (FLRA) over such issues as unfair labor practice charges, negotiability issues and unit determinations.
 2. **Adverse Action**: An official personnel action, usually taken for disciplinary reasons, which adversely affects an employee and is of a severity such as a suspension of over 14 days, a reduction in grade, a demotion or a removal. Typically, an employee may choose to use a statutory appeal procedure, or if applicable, a negotiated grievance procedure, but not both.
 3. **Appropriate Arrangements**: A proposal from the union that interferes with management's rights under 5 USC 7106(a), can nonetheless be mandatorily negotiable if the proposal constitutes an "arrangement" for employees adversely affected by the exercise of a management right and if the interference with the management right isn't "excessive" (as determined by the FLRA using an "excessive interference" balancing test). To qualify as an "arrangement", the intent of the proposal has to be to mitigate the adverse effects of the exercise of the management decision and the proposal has to be tailored so that it applies only to those employees who would be adversely affected by the proposed management decision.
 4. **Arbitration**: A method of resolving a dispute through use of an impartial third party whose decision is usually final and binding.
 5. **Arbitrator**: An impartial third party to whom the parties (union and employer) submit their differences for decision.
 6. **Arbitrability**: Refers to whether a given issue is subject to arbitration under the negotiated agreement. If the parties disagree on whether a matter is arbitrable or not, the arbitrator must resolve this threshold issue before reviewing the merits of the matter at dispute.
 7. **Bargaining Unit**: A group of employees designated by the FLRA as appropriate to be represented by a labor organization for purposes of collective bargaining. The criteria to be met to be determined as appropriate for representation purposes is governed by 5 USC 7112(a) and includes the sharing of a clear and identifiable community of interest, will promote the effective dealings with the agency and will ensure the efficiency of the operations of the agency.
 8. **Bargaining Unit Employee** (vs. union member): It is important not to confuse "unit" employee and "union member". Whether one is in, or not included in, a unit depends on the

unit description and whether the position an employee occupies is encompassed by that description as certified by the FLRA. An employee cannot elect to be in or out of an existing unit: inclusion or exclusion depends solely on the position the employee occupies. On the other hand, being a union member (i.e., voluntarily electing to pay dues to the exclusive representative) is a matter of individual choice. Although, for example, management officials and supervisors cannot be included in a bargaining unit, nothing prevents them from becoming members of (i.e., paying dues to) a union (however, such election to pay dues cannot be done through payroll deduction). Similarly, there is no obligation--at least in the Federal sector's labor-management relations program--for employees in a unit to join a union.

9. **Bargaining Unit Status Code:** A unique four digit code assigned by the Office of Personnel Management (OPM) to each bargaining unit within the Coast Guard. The Bargaining Unit Status (BUS) code identifies the status of each position with respect to union coverage as follows: a code of 8888 identifies positions which are statutorily excluded from coverage in a bargaining unit (management officials, supervisors, confidential employees, employees engaged in personnel work, employees engaged in national securities act work, employees engaged in internal audit functions); a code of 7777 identifies positions that are eligible for coverage in a unit, but there is currently no union certified by the FLRA as representing the employees; any other four digit code reflects the unit to which the position belongs (for example, a BUS code of 3575 means the position is covered under the Coast Guard's AFGE consolidated unit; a BUS code of 3473 means the position is covered by the Metal Trades Council unit at the Coast Guard Yard, etc.).
10. **Collective Bargaining or Negotiations:** The performance of the mutual obligation of the Employer and the exclusive representative to meet at reasonable times, to consult and bargain in good faith, and upon request by either party to execute a written agreement with respect to terms and conditions of employment. This obligation does not compel either party to agree to proposals or make concessions.
11. **Collective Bargaining Agreement:** A written agreement between the Employer and a labor organization, usually for an identified definite term, that defines conditions of employment, rights of employees and labor organizations, and the procedures to be followed in settling disputes or handling issues that arise during the life of the agreement. A collective bargaining agreement may also be referred to as the contract, the negotiated agreement, the agreement, or the CBA.
12. **Conditions of Employment:** Personnel policies, practices and matters whether established by rule, regulations or otherwise, affecting working conditions. It does not include policies, practices and matters relating to prohibited political activities, to the classification of any position, or to the extent the matters are specifically provided for by statute. Conditions of employment is the term used to refer to the physical, environmental and operational features affecting employees' daily work lives – encompassing working conditions that range from such things as the size of an employee's work cubicle, or the system for calculating incentive awards, or moving chairs around in the break room, or moving a computer provided for employees' access of Coast Guard email/notices, to instituting a new work schedule or a new call-in procedure.
13. **Confidential Employee:** An employee who acts in a confidential capacity with respect to an individual who formulates or administers management policies in the field of labor-

management relations. A confidential position is one that requires the incumbent to either be directly involved in formulating or effecting labor-management policies or requires the incumbent to act in a confidential capacity with respect to an individual who formulates or administers labor-management policies. In the Coast Guard, we typically see this exclusion applied to Commanding Officer's secretarial positions and to positions that provide high level administrative support to a Commanding Officer when such support requires the person's regular participation in meetings where labor-management strategies are formulated and discussed. In order to support a determination that a position is confidential and should be excluded from the bargaining unit, management must be able to demonstrate that the position requires more than access to labor relations materials or files (e.g., personnel files, meeting minutes, grievance responses). For example, management must be able to show that the incumbent plays some role in the creation of the documents or has regular access to labor-management policy decisions and information before they are known by the union or bargaining unit employees. Essentially, management must be able to demonstrate with evidence and testimony that the position's inclusion in the bargaining unit would create a conflict of interest with the duties of the position.

14. **Dues Allotment or Dues Withholding:** Practice whereby the Employer, by agreement with the Union upon written authorization from the employee, regularly withholds union dues from bargaining unit employees' wages and transmits these funds to the Union.
15. **Duration Clause:** A clause in the collective bargaining agreement that specifies the time period in which the agreement is in effect. Duration clauses are typically for three years in length but can vary and may also provide for automatic termination on a specific date or automatic renewal for a specific period of time.
16. **Exception to Arbitration Award:** Under 5 U.S.C. 7122, either party to an arbitration may file with the FLRA an exception to the arbitrator's decision if the award is (1) contrary to any law, rule or regulation; or, (2) on other grounds similar to those applied by Federal courts in private sector labor-management relations (for example – the award does not draw its essence from the agreement; the award resolves issues not submitted to arbitration; the award grants a remedy that exceeds the claimed violation). The FLRA will not consider an exception with respect to an award relating to actions taken in accordance with 5 U.S.C. 4303 (performance) and 5 U.S.C. 7512 (conduct/discipline).
17. **Exclusive Recognition/Representative:** The status conferred on a labor organization which (1) receives a majority of votes cast in a representation election; and (2) is certified by the FLRA to represent all employees in an appropriate unit. FLRA certification means that ONLY that particular union is authorized to act for the employees in the identified bargaining unit and negotiate on their behalf. Once certified as the exclusive representative for a group of employees, the agency may not deal with any other organization concerning its employees over matters that are within the purview of the labor relations law or Statute.
18. **Federal Labor Relations Authority (FLRA):** An administrative body empowered by Title VII of the Civil Service Reform Act of 1978 that interprets and oversees compliance with the Federal Service Labor-Management Relations Statute. The FLRA has nine regional offices and is headquartered in Washington, D.C.

19. **Federal Mediation and Conciliation Service (FMCS):** An independent Federal agency that provides mediators to assist parties involved in negotiations or in a labor dispute in reaching an agreement/settlement. The FMCS also provides lists of potential arbitrators upon request and engages in various types of “preventive mediation”.
20. **Federal Service Impasses Panel (FSIP or Panel):** The organizational entity within the FLRA that resolves bargaining impasses in the Federal service. The FSIP may recommend procedures, including arbitration, for the settlement of impasses or it may direct settlement of the impasse itself. It is considered the legal alternative to strikes and lockouts as a means of resolving impasses in the Federal sector.
21. **Federal Service Labor Management Relations Statute (or the Statute):** 5 United States Code Chapter 71; the statute which forms the basis of the labor-management relations program for most non-postal Federal employees.
22. **Formal Discussion:** A discussion between an agency representative(s) and a bargaining unit employee or group of employees concerning any grievance or any personnel policy or practice or other condition of employment which affects bargaining unit employees. An agency representative can be a management official, supervisor, an individual from personnel, a CGIS agent, etc. The exclusive representative must be given reasonable advance notice and an opportunity to be represented at formal discussions.
23. **Good Faith Bargaining:** The standard of dealings imposed on an agency and an exclusive representative which includes the obligation to approach negotiations with a sincere resolve to reach an agreement; to be represented by properly authorized representative who are prepared to discuss and negotiate; to meet at reasonable times and convenient places as frequently as necessary; to avoid unnecessary delays in negotiations; and in the case of the agency, to furnish relevant and necessary data requested by the union to the extent required or permitted by law.
24. **Grievance:** Any complaint by an employee concerning any matter relating to the employment of the employee; by a labor organization concerning any matter relating to the employment of an employee; or by a labor organization, an agency, or an employee concerning the interpretation of or violation of the collective bargaining agreement or a violation, interpretation or application of a law, rule or regulation affecting conditions of employment. Whether a complaint is formally recognized and handled as a grievance depends on whether the subject of the complaint is covered under the negotiated grievance procedure.
25. **Impact and Implementation (I&I) Bargaining:** A statutory right under 5 U.S.C. 7106(b)(2) to negotiate on the procedures used to implement management decisions made under 5 U.S.C. 7106(a).
26. **Impasse:** A situation in which the parties are unable to reach a settlement or agreement over an issue.
27. **Internal Union Business:** Duties performed by an employee acting on behalf of the exclusive representative related to the internal business of the exclusive representative such

as solicitation of membership, elections of labor organization officials and collection of dues. Such duties must be performed on non-duty time and in non-work areas of employees.

28. **Investigatory Examination:** An examination conducted by an agency representative during which an employee is questioned as part of an inquiry to obtain facts. (See also Weingarten Rights.)
29. **Labor Organization (Union):** An organization composed in whole or in part of employees, in which employees participate and pay dues, and that has as a purpose the dealing with an agency concerning grievances and conditions of employment.
30. **Management Official:** An individual employed by an agency in a position in which the duties and responsibilities require or authorize the individual to formulate, determine, or influence the policies of the agency or to determine principles, plans, or courses of action for an agency. Independent judgment is exercised in formulating agency policies. Note: A person who is responsible for effectuating policies or who assists in the implementation of policy is not a management official.
31. **Management Rights:** The right of management to make day-to-day personnel decisions and to direct the workforce without notification or consultation with the exclusive representative. Any changes in the exercise of these rights, however, would require notice to the exclusive representative and negotiations, upon demand, if requested in a timely manner, on the impact and implementation of the decision.
32. **Mediation:** A process by which an impartial third party (a mediator) is used to settle disputes. The mediator assists in resolving the dispute by attempting to find a solution that is satisfactory to both parties. A mediator cannot render any binding decision. Mediation is required before a negotiation impasse can be referred to the FSIP.
33. **Mid-term Negotiations:** The right, under certain circumstances, to initiate bargaining during the term of a collective bargaining agreement.
34. **Negotiability:** Refers to whether a topic is subject to bargaining between an agency and the exclusive representative. The FLRA makes final determinations with respect to whether a subject is negotiable or non-negotiable.
35. **Negotiated Grievance Procedure:** A procedure agreed to by the parties for the resolution of grievances. A negotiated grievance procedure is required under 5 U.S.C. 7121 to be included in all bargaining agreements and requires binding arbitration as the final step in the procedure. The negotiated grievance procedure is only applicable to employees in the bargaining unit. The scope of the procedure is negotiated by the parties and may include certain matters for which statutory appeal procedures exist, unless the parties negotiate their exclusion (for example, EEO complaints, or matters appealable to the MSPB). Several matters cannot be included under the scope of the negotiated grievance procedure as follows: (1) actions taken for violations of the Hatch Act; (2) retirement, life insurance or health insurance; (3) a suspension or removal taken in the interest of national security; (4) any

examination, certification, or appointment; or, (5) the classification of any position which does not result in the reduction in grade or pay of an employee.

36. **Official Time:** Duty time that is granted to employees acting on behalf of the exclusive representative (union) to perform representational duties without loss of pay or charge to an employee's leave account. Official time may not be granted for internal union business.
37. **Particularized Need:** When requesting information under 5 U.S.C. 7114(b)(4), the union must establish a "particularized need" for the information – that is, the union must articulate, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities. This requirement is not satisfied merely by showing that the requested information is or would be relevant or useful to a union – instead the union must establish that the requested information is required in order for the union to adequately represent its members.
38. **Past Practice:** Existing practices sanctioned by use and acceptance on the part of management, which amount to terms and conditions of employment, even though the practice is not specifically included in the collective bargaining agreement. In order to constitute a binding past practice, it has to be established that (1) the practice must involve a condition of employment and (2) the practice must be consistently exercised for an extended period of time and followed by both parties – or followed by one party (i.e., the union or management) and not challenged by the other party over a substantially long duration. If a matter is not a condition of employment, it does not become a condition of employment either through practice or agreement.
39. **Picketing** (or Informational Picketing): Demonstrating to publicize the existence of a labor-management dispute, done typically near the place of employment. 5 U.S.C. 7116(b) protects such demonstration as long as it does not interfere with agency operations. Informational picketing must be done either outside of an individual's normal duty hours or while an employee is in an approved leave status.
40. **Ratification:** Formal approval of a newly negotiated agreement by vote of the labor organization members affected.
41. **Seniority:** Term used to describe an employee's status in relation to other employees for determining such things as overtime assignments, vacations, etc. Straight seniority is acquired through length of Federal service. Agency or organizational seniority considers factors such as length of service with the agency (such as length of time with Coast Guard) or in a particular division or shop within the agency.
42. **Strike:** A temporary stoppage of work by a group of employees in connection with a labor dispute. In the Federal sector, strikes are prohibited by law and constitute an unfair labor practice. Slowdowns, sick-outs and related tactics are also prohibited by statute.
43. **Supervisor:** An individual employed by an agency having the authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove unit employees; adjust their grievances or to effectively recommend such action. The

performance of one or more of these duties qualifies an employee as a “supervisor” for labor relations purposes and excludes the employee from the bargaining unit. However, nurses and firefighters must spend a preponderance of their time doing so to be considered supervisors.

44. **Unfair Labor Practice (ULP):** Action by either the agency or the union that violates the rights granted by the Federal Service Labor-Management Relations Statute. A ULP complaint may be filed by the agency, the union or by employees.
45. **Unilateral Action:** Implementation of a management decision concerning personnel policies and matters affecting working conditions without providing the union advance notice of such change in working conditions and an opportunity to negotiate to the extent permitted by law.
46. **Union Bypass:** Dealing directly with bargaining unit employees rather than the exclusive representative (union) regarding negotiable conditions of employment. A bypass is an unfair labor practice prohibited by 5 U.S.C. 7116(a)(5).
47. **Union Members:** Bargaining unit employees who have elected to pay dues to the exclusive representative.
48. **Union Representative** (aka - Steward, Shop Steward, Area Steward, Chief Steward, Local President, Local Vice President, Council President, etc.): A local union’s representative in an organization who is designated to carry out union duties, represent employees in presenting grievances, collect dues and solicit new members. Representatives are usually, but not always, fellow employees who are trained by the union to carry out these duties.
49. **Waiver:** An agreement reached between the parties whereby one party voluntarily gives up rights afforded to it. For a waiver to be enforceable, it must be “clear and unmistakable”. It is important to note that management cannot waive rights afforded under 5 U.S.C. 7106(a).
50. **Weingarten Right:** Taken from the name of a public sector case, it refers to the right of a bargaining unit employee to be represented by the union when (1) the employee is examined in an investigation conducted by an agency representative; *and* (2) the employee reasonably believes that disciplinary action may be taken as a result; *and* (3) the employee requests union representation.