

**BY ORDER OF THE SECRETARY  
OF THE AIR FORCE**

**AIR FORCE INSTRUCTION 36-701**

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**Personnel**

**LABOR MANAGEMENT RELATIONS**

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This instruction implements AFPD 36-7, Employee and Labor-Management Relations. It contains the Air Force procedures and guidance for managers and supervisors when dealing with bargaining unit employees (BUE) represented by an exclusively recognized union. It assigns responsibilities to commanders, management officials, supervisors, civilian personnel officers (CPO), labor relations officers (LRO), and Staff Judge Advocates (SJA). It implements the Department of Defense Instruction (DoDI) 1400.25, Sub **Chapter 711**, Department of Defense Civilian Personnel Management, December 1996, and used in conjunction with applicable Federal Service Labor-Management Relations Statute, Title 5, United States Code (USC) **Chapter 71** (the Statute). It does not apply to Title 32 Air National Guard Technician Work Force. This publication is not intended to grant rights to employees or unions other than rights provided by law. This publication is not subject to national consultation or bargaining.

In collaboration with the Chief of Air Force Reserve (AF/RE) and the Director of the Air National Guard (NGB/CF), the Deputy Chief of Staff for Manpower, Personnel, and Services (AF/A1) develops personnel policy for labor relations. This Air Force publication may be supplemented at any level; MAJCOM-level supplements must be approved by the Human Resource Management Strategic Board (HSB) prior to certification and approval. Refer recommended changes and questions about this publication to the OPR listed above using the AF Form 847, Recommendation for Change of Publication; route AF Forms 847 from the field through the appropriate chain of command. Requests for waivers must be submitted to the OPR listed above for consideration and approval. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 33-363, Management of Records, and disposed of in accordance with Air Force

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### ***SUMMARY OF CHANGES***

This Instruction has been substantially revised and must be completely reviewed. (T1). Major changes include the addition of Defense Civilian Personnel Advisory Service (DCPAS) responsibilities; eliminates the requirement for installations to establish and maintain a strike contingency plan; updates office symbols throughout; eliminates references to confirmation of a labor organization as the exclusive representative of a collective bargaining unit by Commanders; eliminates the requirement for labor relations officers (LROs) to contact new supervisors within 60 days of appointment; eliminates the transmittal of a case file for arbitration cases to Air Force Personnel Operations Agency/ Work Force Appeals and Relations Division/Major Command (AFPOA/DPW/MAJCOM) from the CPO; eliminates the requirement for forwarding copies of arbitration awards to Air Force Personnel Center/Work Effectiveness Branch/MAJCOM (AFPC/DPIEC/MAJCOM) from the CPO; and adds guidance on information requests, appropriate matters of bargaining, and agency head review (AHR).

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## Chapter 1

### OVERVIEW

**1.1. The Federal Service Labor-Management Relations Statute, Title 5, United States Code (USC), Chapter 71 (the Statute),** governs labor-management relations in the Federal government. The Statute prescribes certain rights to, and imposes obligations upon employees, unions, and management. The Air Force is committed to fostering an effective labor-management relationship that contributes to the overall efficiency of the mission and is within the public interest. The terms defined in 5 USC 7103(a) contains the same definitions when used in this Instruction.

**1.2. Air Force commanders and management representatives will maintain cooperative and productive labor management relations.** Management will bargain in good faith and provide union representatives information necessary for negotiations to the extent permitted by law or regulation. (T-0).

**1.3. The Air Force will** administer the labor relations program without unlawful discrimination because of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information, or prior EEO activity. (T-0).

## Chapter 2

### AUTHORITIES AND RESPONSIBILITIES

#### 2.1. Directorate of Civilian Force Management, Civilian Personnel (AF/A1C).

- 2.1.1. Provide guidance on provisions of this Instruction.
- 2.1.2. Advise Headquarters Air Staff management officials of their responsibilities and obligations for national consultation on Air Force Instructions, Manuals, Pamphlets, and other changes to policies and programs impacting bargaining unit employees.
- 2.1.3. Facilitate national consultation and Air Force labor management forums.
- 2.1.4. Maintain an effective relationship with the Secretary of Air Force Assistant General Counsel for Administrative Law (SAF/GCA) and the Air Force Legal Operations Agency/JACL/Labor Law Field Support Center (AFLOA/JACL/LLFSC) on labor relations matters.
- 2.1.5. Advocate for cooperative and productive labor management relations.
- 2.1.6. Represent Air Force management with national union representatives.

#### 2.2. Air Force Personnel Center (AFPC).

- 2.2.1. Provide operational guidance and management advisory services on a wide range of labor relations issues including bargaining obligations and contract negotiation.
- 2.2.2. Serve as the agency focal point for MAJCOM and installation labor relations issues requiring collective resolution for the overall program.

#### 2.3. Air Force Legal Operations Agency Labor Law Field Support Center (AFLOA/JACL/LLFSC).

- 2.3.1. Represent the activity in any representation petitions and proceedings. This includes engaging in any litigation activities (i.e. preparing briefs, attending hearings).
- 2.3.2. Defend and file unfair labor practice (ULPs) charges with the Federal Labor Relations Authority (FLRA) against and for Air Force installations. This includes engaging in any litigation activities (i.e. preparing position statements, attending hearings) necessitated by a ULP charge.
- 2.3.3. Coordinate written declarations of non-negotiability to the Defense Civilian Personnel Advisory Service (DCPAS). ***Management may not declare proposals non-negotiable without DCPAS review and concurrence.***
- 2.3.4. Defend any negotiability disputes brought before the FLRA. This includes engaging in any litigation activities (i.e. preparing briefs, attending hearings) necessitated by a negotiability dispute.
- 2.3.5. Prepare and respond to appeals of arbitration awards made under Section 7122 of the Statute or other applicable provisions of law or regulation with activity and MAJCOM involvement.



2.3.6. Represent installation and MAJCOM management in any impasse proceedings filed with the Federal Service Impasses Panel (FSIP). This includes engaging in any litigation activities (i.e. preparing briefs, attending hearings) necessitated by a FSIP proceeding.

2.3.7. Some Air Force Materiel Command (AFMC) bases are responsible for labor law representation for their respective organizations, with the exception of representation in Federal Court. The LLFSC has representational responsibility for all labor litigation filed against the Air Force in Federal Court. The LLFSC also has all FLRA litigation responsibility (with the exception of FLRA litigation involving select AFMC bases and AFRC bases). The term FLRA litigation as used in this Instruction refers to all matters filed against the Air Force with the FLRA, the FLRA Office of the General Counsel (OGC) and its Regional Offices, and the FSIP.

#### **2.4. Major Commands (MAJCOM), Field Operating Agencies and Direct Reporting Units:**

2.4.1. Advise subordinate organizations on Command policies impacting the civilian workforce and associated labor obligations.

2.4.2. Review and oversee precedential or controversial labor relations matters.

2.4.3. HQ AFMC provides guidance, oversight, interpretation, and administration of MAJCOM-wide collective bargaining agreements (CBA) with unions holding recognition at the MAJCOM level.

#### **2.5. Installation Commanders.**

2.5.1. Provide overall direction in the execution of the Labor-Management Relations Program at the installation.

2.5.2. Designate CPOs or LROs to act on their behalf in formulating local labor-management relations policy for appropriated fund employees.

2.5.3. Designate Non-appropriated Fund Human Resource Officers (NAF HRO) to act on their behalf in formulating local labor-management relations policy for non-appropriated fund employees.

2.5.4. Ensure sufficient resources to effectively manage the program.

2.5.5. Authorize subordinates to engage in collective bargaining with the duly elected representatives of the union.

2.5.6. Make lawful commitments on behalf of the installation by executing negotiated labor management agreements.

2.5.7. Execute, in consultation with the appropriate LLFSC and LRO, appropriate actions to resolve alleged ULP filed by individuals or collective bargaining agents.

2.5.8. Approve, in consultation with the appropriate LLFSC and LRO, the filing of ULP charges, as necessary, against collective bargaining agents when the MAJCOM has delegated the authority to the installation.

2.5.9. Post notices and implement orders as required by the FLRA.

2.5.10. Encourage labor-management forums by participating in labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by

labor and management; or participating in existing labor-management councils or committees, to help identify problems and propose solutions to better serve the public and agency missions pursuant to Executive Order 13522.

## **2.6. Civilian Personnel Officers (CPOs).**

2.6.1. Serve as principal advisors to commanders and their staff on labor relations matters involving appropriated fund employees.

2.6.2. Designate a LRO as the principal point of contact in conducting labor relations matters with appropriated fund labor organization representatives.

2.6.3. Participate in contract negotiations with labor organization representatives when designated by the commander.

## **2.7. Installation Labor Relations Officers (LRO) .**

2.7.1. Provides advisory services on a wide range of labor relations issues to all levels of installation management. Serve as the principal point of contact in conducting labor relations matters with appropriated fund labor organization representatives and communicate with those representatives as required by the Federal Service Labor-Management Relations Statute or an applicable CBA.

2.7.2. Establish a system for sharing information among management officials and supervisors on all aspects of the appropriated fund labor relations program. This system involves management officials and supervisors of tenant organizations serviced by the civilian personnel section, regardless of whether the tenants are located on or off the installation.

2.7.3. Discuss labor relations responsibilities with new supervisors of appropriated fund bargaining unit employees.

2.7.4. Train civilian and military management officials and supervisors in their duties, responsibilities, and obligations under the Air Force labor relations program, the Statute and the CBA.

2.7.5. Obtain AHR of labor agreements in accordance with paragraph 9.1 of this Instruction.

2.7.6. Distribute or post any applicable approved CBA to all current and newly assigned management officials and supervisors (military and civilian) responsible for its administration.

2.7.7. Maintain an effective relationship with the LLFSC on labor relations matters.

2.7.8. Notify employees in bargaining units of their Weingarten rights set forth in section 7114(a)(3) of the Statute on an annual basis.

2.7.9. Assist with the appropriate legal office on union requests for information and bargaining proposals if needed.

2.7.10. Consult with LLFSC at least 90 days prior to automatic renewal or rollover of CBAs. Remember, rollover CBAs require agency head review.

2.7.11. Coordinate with AFPC where the outcome of negotiations may affect or impact operations or require the AFPC to take certain actions.

2.7.12. Participate in contract negotiations with labor organization representatives when designated by the commander.

2.7.13. In coordination with management officials, ensure civilian position descriptions and the Defense Civilian Personnel Data System (DCPDS) automated database are coded with the correct bargaining unit status (BUS) codes.

2.7.14. Assist management in responding to requests for information.

2.7.15. Process grievances submitted under a negotiated grievance procedure.

2.7.16. Coordinate with management, SJA, and LLFSC on representation cases, ULP charges, negotiability issues, and arbitration awards.

2.7.17. Coordinate with the CPO, and the LLFSC if necessary, on all labor-management issues with base-wide or Air Force-wide ramifications.

## **2.8. Nonappropriated Fund (NAF) Human Resources Officer (HRO).**

2.8.1. Provides advisory services on a wide range of labor relations issues to all levels of installation management. Serves as the principal point of contact in conducting labor relations matters with nonappropriated fund labor organization representatives and communicate with those representatives as required by the Federal Service Labor-Management Relations Statute or an applicable CBA.

2.8.2. Discuss labor relations responsibilities with new supervisors of nonappropriated fund bargaining unit employees. Train civilian and military management officials and supervisors in their duties, responsibilities, and obligations under the Air Force labor relations program, the Statute and any applicable CBA.

2.8.3. Distribute or post any applicable, approved CBA to all current and newly assigned management officials and supervisors (military and civilian) responsible for its administration.

2.8.4. Notify employees in bargaining units of their Weingarten rights set forth in section 7114(a)(3) of the Statute on an annual basis.

2.8.5. Track and report use of official time as required.

2.8.6. In coordination with management officials, ensure civilian position descriptions and the Defense Civilian Personnel Data System (DCPDS) automated database are coded with correct bargaining unit status (BUS) codes.

2.8.7. Assist management in responding to requests for information.

2.8.8. Process grievances submitted under a grievance procedure.

2.8.9. Coordinate with management and LLFSC on representation cases, ULPs, negotiability issues, and arbitration awards.

2.8.10. Coordinate with the CPO, and the LLFSC if necessary, on all labor-management issues with base-wide or Air Force-wide ramifications.

2.8.11. When applicable, the LRO may perform the above functions and/or assist the HRO.

## **2.9. Management officials and supervisors.**

2.9.1. Remain neutral in matters concerning labor organization membership and representation to the extent required by the law.

2.9.2. Administer the negotiated agreement in the day-to-day work relationship with local union officials and bargaining unit employees and engage with labor organization representatives on appropriate matters. If the matter is outside the jurisdiction of a management official or supervisor, he or she refers the labor organization representative to the LRO for appropriated fund employees; or to the NAF HRO for nonappropriated fund employees.

2.9.3. Participate in contract negotiations with labor organization representatives when designated by the commander.

2.9.4. Keep records of significant dealings with labor organization representatives and participate in third party administrative proceedings, as required.

2.9.5. Seek the advice/recommendation of their servicing LRO regarding interpretation of their CBA and any change in bargaining unit working conditions, policies, procedures, etc. Ensure bargaining obligations are met prior to implementing changes to conditions of employment.

2.9.6. Assist LRO and legal advisors in preparing for third party proceedings.

2.9.7. Supervisors review and approve requests for official time IAW local agreements, etc.

2.9.8. Track official time usage by ensuring the use of official time is properly recorded in the time and attendance system.

## **2.10. Staff Judge Advocates (JA)**

2.10.1. Provide legal support for the labor relations program. Review union bargaining proposals and requests for information.

2.10.2. Coordinate, when appropriate, with the CPO, LRO, NAF HRO and the LLFSC on the terms of any proposed settlement agreement in third party proceedings involving conditions of employment for civilian employees.

2.10.3. Represent the activity in arbitration proceedings arising out of a negotiated grievance procedure.

2.10.3.1. JA will coordinate with LLFSC to ensure there are no Air Force wide implications. (T1).

2.10.3.2. The LLFSC represents the Air Force when there are Air Force wide implications.

2.10.4. CPO/LRO/HRO may represent the Air Force in third party hearing with approval from the LLFSC.

## Chapter 3

### RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

**3.1. Employee Rights.** In accordance with 5 USC 7102, each employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. (T0).

3.1.1. To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities.

3.1.2. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

3.1.3. While typically an employee has limited control over whether he or she is covered by a bargaining unit, it is the employee's decision whether to be a union dues paying member, and if a union member, how actively engaged to become in the administration of the union.

**3.2. Labor Management Forums and Pre-decisional Involvement (PDI).** Executive Order 13522, *Creating Labor-Management Forums To Improve Delivery of Government Services*, December 9, 2009, requires the Air Force, to the extent permitted by law, establish labor management forums at the level of recognition (e.g. installation level), to help identify problems and propose solutions to better serve the public and agency mission. The use of labor management forums benefits managers, unions, and employees. Disputes may be resolved more quickly and earlier than in other dispute resolution processes. Litigation and other costs are lower, and further complaints are avoided as parties learn to communicate better with each other. In addition, the labor management forum is less adversarial than other processes available for resolving disputes. This leads to more creative solutions and the parties are more satisfied with the results. Pre-decisional involvement is a tool to share information, ideas, concerns, and options early in the decision-making process. PDI does not eliminate bargaining or other labor obligations under the Statute. Installations that are currently utilizing labor partnerships or labor-management committees for this purpose may continue to do so in compliance with the Executive Order.

**3.3. Strike, work stoppage, slowdown, or picketing is prohibited.** It is an unfair labor practice for labor organizations to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with the agency's operations (5 USC 7116). When such actions are threatened or occur, management officials and supervisors must immediately notify the CPO, who, in turn, notifies the SJA. (T1). The CPO notifies LRO to coordinate with LLFSC. The CPO and SJA advise management on a course of action given the facts of the situation.

**3.4. Union organizing.** The Statute provides that an agency shall recognize a labor organization as the exclusive representative of employees in a bargaining unit, if that organization has been selected as the representative by a majority of the unit's employees who voted in a secret ballot election. (T0).

3.4.1. In order for a union to represent employees, it must first file a petition with the FLRA. That petition must establish that at least 30% of the employees in the proposed unit wish to be represented by the union as evidenced by their signatures, and that the unit is appropriate. (T0). To be appropriate, a unit must (T0):

- 3.4.1.1. Demonstrate a community of interest;
- 3.4.1.2. Promote effective dealings with the agency; and
- 3.4.1.3. Promote the efficiency of agency operations.

3.4.2. Employees already represented by a union may petition the FLRA to be represented by another union or to be unrepresented. A petition must be filed with signatures of at least 30% of the employees in the unit asserting that the exclusive representative is no longer the representative of a majority of unit employees. Provided at least one year has elapsed since a representation election was conducted, the FLRA will hold an election and representation (or lack thereof) will be determined by a majority of the ballots cast. A negotiated agreement between labor and management bars another union from seeking to represent the bargaining unit until shortly before the expiration of the existing negotiated agreement. At that time (not more than 105 or less than 60 days prior to the expiration of an agreement of 3 years or less), the FLRA will consider a petition timely if filed by a rival union. (T0).

3.4.3. Petitions may be filed to amend or clarify the description of a bargaining unit (e.g., if a reorganization changes the name of the activity), to consolidate two or more bargaining units, or to determine if individual employees are included in the bargaining unit. It is strongly recommended that activities file these latter types of petition upon any organizational changes which impact on the bargaining unit's description. Activities must coordinate with the LLFSC before filing a clarification petition. (T1).

- 3.4.3.1. Where DoD components are co-located, units should not cover more than one component (e.g. Air Force and Navy or Army employees).

**3.5. Representation Proceedings (5 CFR Part 2422).** When the installation or MAJCOM receives a representation petition from the FLRA Regional Director, it must notify the LLFSC immediately and forward a copy of the petition to that office within two workdays. (T1). The LLFSC assigns a management representative to the case and notifies the Regional Director, FLRA, of such assignment. The assigned representative issues or coordinates on any further management correspondence concerning the case.

## Chapter 4

### MANAGEMENT RIGHTS

**4.1. Management Decision Making Authority.** Management rights are those areas over which management exercises exclusive decision-making authority as spelled out in 5 U.S.C 7106.

**4.2. Reserved Rights.** Reserved rights are nonnegotiable; however, management must bargain, upon request, over the procedures it will use in exercising these rights and on appropriate arrangements for employees adversely affected by the exercise of such rights. (This is commonly referred to as impact and implementation (I&I bargaining)). For example, in a reduction-in-force, the decision to RIF is a management right, but outplacement or other assistance for displaced employees are negotiable issues. (T0). Reserved rights include:

4.2.1. To determine the mission, budget, organization, number of employees, and internal security practices of the agency.

4.2.2. To hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees.

4.2.3. To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted. (T0).

4.2.4. To make selections for appointments from, among properly ranked and certified candidates for promotion; or any other appropriate source; and

4.2.5. To take whatever actions may be necessary to carry out the agency mission during emergencies.

**4.3. Permissive Rights.** Management may bargain permissive subjects, but is not statutorily required to do so.

4.3.1. The numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.

4.3.2. Procedures which management officials of the agency will observe in exercising any authority under this section (T0); or

4.3.3. Appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

4.3.4. Although the law does not mandate bargaining over permissive management rights, once the parties include such rights in the CBA, they are enforceable for the life of the agreement. Contact your LRO and LLFC for questions on mandatory and permissive subjects of bargaining.

## Chapter 5

### NATIONAL CONSULTATION RIGHTS (NCR)

**5.1. Legal Requirement for Consultation.** Section 7113 of the Statute requires the Air Force to consult with labor organizations afforded National Consultation Rights. Any issue relating to a labor organization's eligibility for, or continuation of national consultation, is subject to determination by the FLRA. (Refer to Headquarters Operating Instruction (HOI) 36-6 for specific procedures for conducting NCR.)

**5.2. Matters Subject to Consultation.** The Air Force informs labor organizations granted NCR of any substantive change in conditions of employment proposed by AF that are applicable to field activities. Conditions of employment means personnel policies, practices, and matters (whether established by rule, regulation, or otherwise) affecting working conditions of bargaining unit employees. (T0). For example, if an Air Force organization proposed an Instruction changing the safety requirements for flight line employees; it would constitute a change in working conditions. The Air Force need not provide national consultation opportunities where it has already been done by the Department of Defense, unless the Air Force proposes supplemental policies or programs.

**5.3. National Consultation Rights .** NCR do not substitute for, nor excuse, an installation or activity from the obligation to give notice and, upon request, bargain with its recognized labor organization to the extent required by law over planned changes in conditions of employment (i.e. impact and implementation bargaining).

**5.4. How the Air Force Accomplishes National Consultation.**

5.4.1. Each directorate or equivalent organization level in HQ USAF is responsible for national consultation on matters within its jurisdiction. All memoranda, with attachments, will be coordinated through AF/A1CM prior to being sent to labor organizations. AF/A1CM will provide guidance on the necessity of consultation and the content of national consultation memoranda. (T0).

5.4.2. The office of functional responsibility (i.e. the proposing organization) drafts and forward national consultation memoranda to labor organizations to include the name and telephone number of the Air Force action officer to who questions may be directed. The office of functional responsibility maintains copies of signed/dated documentation reflecting compliance with these requirements.

5.4.3. Timing the issuance of national consultation memoranda to labor organizations granted NCR is important. Copies should be provided after receipt of major command and HQ USAF coordination, but before the proposed action is prepared in final form for certification. Labor organizations should be provided with a copy of the proposed changes in final draft form. Providing an action in final form to the unions would not meet the spirit and intent of consultation; because any helpful or important suggestions or comments provided back to the Air Force may not be incorporated into the policy.

5.4.4. A reasonable date, no less than 30 calendar days, by which a formal reply from the labor organization is requested. Include a statement that if a reply is not received by that date, it is then understood that the labor organization has no comments concerning the proposed



change. Except in unusual circumstances when the time factor is critical, the transmittal letter will provide no less than 30 calendar days for response from the labor organizations. (T1).

**5.5. A labor organization may request a meeting to discuss the proposed change.** This request must be made within the comment period. The office to which the request is made will promptly arrange the meeting. The office will carefully consider the labor organization's views and comments and make an appropriate response either at the time of the meeting, or at a later date in writing. This type of meeting does not alleviate the responsibility for, or take the place of, bargaining at the local level. (T1).

**5.6. If a response is not received by the specified time in the national consultation memorandum,** and an extension is not granted, the NCR obligation will be considered fulfilled and the proposed change may be implemented subject to local bargaining. If a labor organization with NCR submits timely views or recommendations, the office of functional responsibility will consider such views and recommendations prior to taking final action. Copies of any responses from labor organizations should be retained with copies of the national consultation memorandum. (T1).

5.6.1. The office of functional responsibility will inform each labor organization of the final action taken on its views or comments. Unions will be informed before implementation of the proposed change. Notification will include a brief explanation of why the office of primary responsibility did or did not incorporate the views or comments. (T1).

5.6.2. Offices of functional responsibility will keep HQ USAF/A1CP informed of consultation memo, labor organization responses, and any subsequent correspondence so that it may monitor the progress of such consultation and compliance with the labor statute. (T1).

## Chapter 6

### DUTY TO BARGAIN

**6.1. Duty to Bargain.** The following list provides reasons why a particular proposal may fall outside management's duty to bargain. This listing does not address whether a proposal is non-negotiable (i.e., violates management's rights or government-wide law, rule or regulation). If management has any questions regarding whether the agency has a duty to bargain over a proposal, it must contact the LRO who provides guidance on the matter. (T1). When necessary, the LRO coordinates with the LLFSC for further guidance. Management should consider the following questions when reviewing union proposals:

- 6.1.1. Proposals directly affect non-bargaining unit employees' conditions of employment?
- 6.1.2. Proposals directly affect the conditions of employment of employees in other bargaining units?
- 6.1.3. Does the proposal concern matters unrelated to conditions of employment or is it outside of the working relationship?
- 6.1.4. Is the subject matter of the proposal covered by (included in) the parties' agreement?
- 6.1.5. Did the parties previously negotiate over the proposal and elect not to include it in the negotiated agreement?
- 6.1.6. Does the management-initiated change, which is the subject of the negotiations, have a *de minimis* effect on the bargaining unit employees?
- 6.1.7. Has the union specifically waived its right to negotiate over the matter?
- 6.1.8. Does the proposal limit management's reserved rights (e.g., requiring management to notify the union 15 days prior to filing a ULP charge)?
- 6.1.9. Was management authorized to take the action it is proposing by the terms of the parties' agreement?
- 6.1.10. Does a law or government-wide rule or regulation provide the agency sole and exclusive discretion to take a particular action?
- 6.1.11. Does the proposal conflict with agency or government wide rules and regulations for which there is a compelling need under 5 USC §7117.

**6.2. Past Practice.** Management may need to bargain over a change to a past practice. A past practice is defined as an existing practice, sanctioned by use and acceptance by either management or union, which is not specifically included in the CBA. A past practice is found to exist when the following conditions are present:

- 6.2.1. The practice is a condition of employment and/or working conditions.
- 6.2.2. The practice consistently practiced over an extended period of time. There is no precise answer to what "consistently" means or how long is "an extended period of time." In determining whether a past practice has been established, management should consider the frequency of the occurrence.
- 6.2.3. Management is aware of the practice.

6.2.4. Whether or not a practice becomes a past practice is determined on a case-by-case basis. Normally, supervisors cannot unilaterally stop an established past practice. Rather, they give notification to the union of intent to terminate or modify the practice and afford the union an opportunity to bargain, if requested. The proposed change to the past practice cannot be implemented until negotiations have been completed. One exception to this is if the past practice is illegal. In that case, ceased the practice immediately, the union given notice of the change, the reason for its immediate termination and an opportunity to bargain over the impact and implementation of the change.

**6.3. De minimis.** The term “de minimis” is used to refer to a change in conditions of employment that is not significant enough to require bargaining. Thus, if an issue is more than de minimis (important enough) the agency must bargain the issue. (T0).

6.3.1. Any questions regarding the application of the de minimis test should be referred to the LRO for guidance. If additional guidance is required, the LRO contacts the LLFSC for assistance.

## Chapter 7

### COLLECTIVE BARGAINING/NEGOTIATIONS

**7.1. Formal Negotiations.** The formal phase of contract negotiations begins when the union requests its first meeting with management to discuss a written contract, or submits its contract proposals; management requests a meeting with the exclusive representative to discuss a written contract or submits its contract proposals; or within the time specified in the existing CBA, either party notifies the other of its intent to renegotiate the existing contract.

**7.2. Methods.** Negotiations typically are accomplished using one of two methods (or a combination).

7.2.1. Interest Based Bargaining. This is a joint effort approach to address the interests of both management and the union. Both sides seek to find mutual solutions to problems. If using an interest based approach, it is recommended to have joint labor-management training on the interest based bargaining process. Review the local CBA for agreed upon procedures.

7.2.2. Position Based Bargaining. Both management and the union submit proposals and then debate why their proposals are better than the other side's. Each side is interested in winning the argument and obtaining their language, regardless of the parties' long term relationship.

**7.3. Process.** The negotiating process is designed to promote the balancing of rights and interests of employees and the union with those of management.

7.3.1. Negotiating with the labor union occurs at various times and for different reasons. Formal negotiations result in a written CBA signed by both management and the union establishing various personnel policies, practices, and conditions of employment. The agreement is distributed to everyone at the installation affected by its application. The document may be referred to as the contract, the collective bargaining agreement or the labor-management negotiated agreement. The agreement defines when re-negotiations commence and/or automatic renewal occurs.

7.3.2. In these cases, when an agency decides to make changes to conditions of employment during the life of an agreement or when there is no agreement, two types of negotiations may result; substantive negotiations on the decision itself or I&I bargaining. I&I bargaining occur when management's proposed change falls within management rights.

**7.4. Condition of Employment.** The first consideration is whether the matter is a condition of employment. Conditions of employment are personnel policies, practices and matters affecting working conditions. If a matter is not a condition of employment, there is no obligation to bargain over it. Excluded from the definition of conditions of employment are policies, practices or matters related to prohibited political activities, the classification of any position, or other matters specifically provided for in Federal Statute 5 USC 7103(a)(14).

**7.5. Contracts.** A CBA is a binding document on the bargaining unit employees, the union and management. It is in everyone's best interest to assure that the terms of the agreement are enforced and that disputes over the application and meaning of the agreement are resolved quickly and at the lowest practical level. It is important to take detailed minutes of negotiations.

**7.6. Language.** Contracts should not contain vague or subjective terms that are open to various interpretations depending on the reader's perceptions and experience. For example, the terms "reasonable," "short duration," "fair and equitable," "normally" are subjective terms that should be avoided.

7.6.1. If management and the union are unable to resolve a dispute due to contract language, the matter can be raised under the parties' negotiated grievance procedure. All negotiated grievance procedures provide for binding arbitration as a final step to the process. Here, an outside neutral party, the arbitrator, decides for the parties what the contract provision means and how it is to be implemented. Resolving the matter locally, without outside intervention, is the best solution. The parties are more likely to accept, and be responsible for, a solution they helped craft. An outside imposed solution may not please either side.

7.6.2. Reopener Negotiations for Changes in Law. If there is a change to a law (e.g., Fair Labor Standards Act, Family Medical Leave Act) the parties are required to reopen the contract and negotiate to remove any conflicts from the CBA. The parties should refer to the reopener procedures in their respective agreement to facilitate that process.

## Chapter 8

### AGENCY HEAD REVIEW

**8.1. Air Force Labor Agreements.** The provisions of 7114(c) provide for AHR through DCPAS of any agreement reached through collective bargaining. If resolution of an individual grievance results in modification of the CBA, then that part of the settlement altering the CBA is reviewable as the CBA may only be changed through collective bargaining (whether it takes the form of a settlement or other format). Agreements not requiring AHR review are settlement agreements resolving individual grievances that do not alter the CBA.

8.1.1. DCPAS will return AHR notification to management and union of approval or disapproval and identify specific reasons for disapproval. (T0).

8.1.2. DCPAS disapproval means the entire contract is disapproved, unless there is a provision in the ground rules or other agreement that the contract will go into effect minus any disapproved provisions, or the parties execute a subsequent agreement to implement those provisions not specifically disapproved. If disapproved, the union can challenge those determinations by filing a negotiability petition or an ULP charge with the FLRA. DCPAS acts as the agency representative for any FLRA proceedings initiated by the disapproval of an agreement on agency head review.

8.1.3. If disapproved, the parties may agree to go back and renegotiate disapproved provisions or exclude those provisions from the contract.

### **8.2. Negotiated agreements subject to Agency Head Review include .**

8.2.1. Master Labor Agreements

8.2.2. CBAs

8.2.3. Ground Rules

8.2.4. Memorandums of Understanding (MoU)

8.2.5. Memorandums of Agreement (MoA)

8.2.6. Local Agreement subject to a national or other controlling agreement at a higher organizational level will be reviewed pursuant to the procedures of the controlling agreement. Where no such procedures are contained in the controlling agreement, the local agreement will be reviewed pursuant to the AHR procedures. (T0).

8.2.7. Settlement Agreements if the agreement alters the terms and conditions of a CBA.

### **8.3. When Agency Head Review occur.**

8.3.1. Upon execution of ground rules

8.3.2. Upon execution of any new labor agreements

8.3.3. Upon execution of term or renegotiated contracts

8.3.4. Upon rollover or “automatic renewal” of agreements

8.3.5. Upon execution of mediation or impasse language

8.3.6. Upon execution of a settlement agreement if a settlement agreement alters the terms and conditions of a CBA.

**8.4. Documents. When submitting a labor agreement to DCPAS, include:**

8.4.1. A copy of the agreement;

8.4.2. A copy of the signature page with the date of execution and all signatures required to finalize the agreement;

8.4.3. Contact information for management (CPO or LRO) and union representative to include official mailing address, email, and phone number;

8.4.4. OPM Form 913B.

**8.5. Ratification.** Unions may have a similar review process in place, known as ratification, though it's not required by Statute. The ratification process must be completed prior to agency head review. (T0).

**8.6. Timeliness.** Agency head review must be accomplished within 30 days from the date the agreement is executed by the Commander and the Union President. (T0). If not approved or disapproved by DCPAS within that time, the agreement goes into effect the 31st day after execution (excluding provisions contrary to law or government-wide regulation). Delays in submitting agreements reduce DCPAS's time to provide a thorough review.

**8.7. Rollover or Automatic Renewal.** Agreements containing a "rollover" or "automatic renewal" clause are subject to AHR in accordance with 5 USC7114(c)(1). It will help you and future parties to include AHR as part of the renewal process in your contract. Typically, the contract provides for a 105-60 day open-window prior to automatic renewal of the agreement. During that time, either party may request to reopen the agreement for negotiation. LROs should review contracts prior to rollover or automatic renewal to determine the need for revision or to incorporate MoAs. LROs are required to further obtain LLFSC legal review of the contract at least 90 days prior to automatic renewal or rollover of CBAs.

## Chapter 9

### FORMAL DISCUSSIONS

**9.1. Obligation.** Management has a positive obligation to invite the union to attend any formal discussion between one or more representatives of the agency and one or more employees in the bargaining unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

**9.2. Formal Discussion or Meetings.** For a meeting to be considered a formal discussion, it must include one or more representatives of the agency (e.g., supervisors, management officials, or attorneys); and one or more employees in the bargaining unit or their representatives. The discussion must be formal in nature (e.g., a meeting called by management to introduce a new work schedule policy). A meeting does not become a formal discussion unless the subject concerns an individual's grievance, a personnel policy or practice, or general conditions of employment. (T0). The following discussions or meetings may constitute formal discussions:

9.2.1. A discussion between management and a grievant relating to a grievance is a formal discussion. (Presently, the Authority considers formal EEO complaints as grievances for purposes of formal discussions.) The union must be invited to attend even if the employee is representing him or herself in the negotiated grievance proceeding and the grievant does not want the union to attend. (T0).

9.2.2. Discussions with bargaining unit employees about general conditions of employment or personnel policies and practices. The following discussions or meetings are not considered formal discussions:

9.2.3. Normal shop talk

9.2.4. Performance evaluation discussions

9.2.5. Meetings discussing work projects (e.g., weekly staff meetings)

9.2.6. The FLRA has indicated certain factors it looks at in determining whether a meeting was a formal discussion:

9.2.6.1. Whether the individual who held the discussion is a first-level supervisor or is higher in the management hierarchy (the higher the level, the more a formal discussion is indicated);

9.2.6.2. Whether any other management representatives attended;

9.2.6.3. Where the individual meeting took place (i.e., in the supervisor's office, at each employee's desk, or elsewhere);

9.2.6.4. How long the meeting lasted;

9.2.6.5. How the meeting was called (i.e. with formal advance written notice or more spontaneously and informally);

9.2.6.6. Whether a formal agenda was established for the meeting;

9.2.6.7. Whether each employee's attendance was mandatory; and



9.2.6.8. The manner in which the meeting was conducted (i.e., whether the employee's identity and comments were noted or transcribed).

9.2.7. The above list provides indicators of a formal discussion, they need not all be present for the FLRA to find a meeting was a formal discussion. The FLRA looks at the totality of the circumstances and not just any single factor in determining if there was a formal discussion.

9.2.8. Prior to scheduling a meeting with the employee and the union, the supervisor should contact the LRO to verify if the meeting is a formal discussion.

9.2.8.1. If the meeting meets the definition of a formal discussion, management must invite the union to attend. Having a shop steward, who works in the office, at the meeting in his or her role as an employee, does not meet this obligation. Rather, the supervisor must invite the union to the meeting with the union being free to designate whom it wants to act as its representative. (T0).

9.2.8.2. The union is allowed to participate in formal discussions by raising questions, comments or concerns, but it cannot disrupt the meetings.

### **9.3. Weingarten Rights**

9.3.1. Another statutory right involves meetings with employees in connection with an investigation and the employee requests union representation. This provision is often referred to as employees' "Weingarten" rights, based on a 1975 Supreme Court decision. The Statute establishes three conditions that are required to be met for a meeting to be considered a "Weingarten" meeting:

9.3.1.1. One or more agency representatives are examining (questioning) a bargaining unit employee in connection with an investigation;

9.3.1.2. The employee reasonably believes that the examination may result in disciplinary action against the employee; and

9.3.1.3. The employee requests union representation.

9.3.2. Once all three conditions have been met, supervisors may generally not continue the examination without allowing the employee his or her representation. Specifically, the supervisor's options under these circumstances are:

9.3.2.1. Grant the employee request allow the employee to contact the union representative; or the supervisor notify the union that a meeting to examine a bargaining unit employee is going to take place and that the employee has requested union representation. The local CBA may also contain a provision union notification. If the union attends the meeting, they are allowed to make relevant comments but cannot disrupt the meeting nor can it answer the questions posed to the employee;

9.3.2.2. Discontinue the interview and rely on evidence already available or information obtained from other sources; or

9.3.2.3. Offer the employee a clear choice to: a) continue the interview without representation, or b) have no interview.

9.3.3. "Weingarten" rights are not applicable when management issues a disciplinary action since management is not asking any questions. Additionally, the "Weingarten" right does not come into play when engaging in performance counseling as this does not concern disciplinary matters but, rather, performance issues.

9.3.4. Management, usually the installation labor relations specialist, is responsible for annually notifying employees of their "Weingarten" rights. This can be accomplished by desk drops, notices in the installation paper, etc. The "Weingarten" rights are not like "Miranda" rights in that management is not obligated to inform employees of their rights each time before questioning them. Refer to the CBA for any requirements for individual notification.

## Chapter 10

### OFFICIAL TIME

**10.1. Official Time to Perform Representational Functions.** Official time must be granted to employees representing a labor organization when engaged in collective bargaining, to include attendance at impasse proceedings (5 USC 7131(a)). (T0).

10.1.1. Official time cannot be granted for internal union business, such as, soliciting union membership and voting or campaigning for internal union elections (5 USC 7131(b)).

10.1.2. The FLRA can authorize official time for employees representing the union in any phase of proceedings before the Authority (5 USC 7131(c)).

10.1.3. Official time may be granted for other reasons (non-statutory or “contractual”) as dictated by the parties’ CBA, or through a past practice. The time granted must be reasonable, necessary, and in the public interest. Examples of non-statutory/contractual official time include representational functions associated with grievances and arbitration hearing, preparation for negotiations, and attendance at labor-management committee meetings. (T0).

10.1.4. Official time requests are raised to the union official's first-line supervisor or authorizing official. In evaluating requests, consideration should be given to its reasonableness, the amount of time requested, past practices of allowing time, the time of day it is to be used, availability of the staff to accomplish the mission, contractual obligations, etc. Supervisors monitor the amount of official time used. If a supervisor fails to ensure proper usage of official time by the union officials, he/she may find that a past practice of extensive official time usage/accounting has occurred. When monitoring the use of official time, supervisors are cautioned not to interfere with the protected rights of the union stewards and employees.

10.1.5. In the event the union official’s official business cannot be concluded within the time approved for official time, the union official will contact their immediate supervisor and request additional time. If the immediate supervisor denies the verbal request based on the needs of the mission, the union representative and the supervisor will seek mutual agreement on an alternate time for absence. (T3).

10.1.6. If a supervisor has a question as to the appropriateness of official time being requested, contact the LRO for guidance.

10.1.7. Arbitrary disapproval of request for official time could result in a ULP filed against the agency.

10.1.8. An employee may not represent other employees who are members of another bargaining unit on official time.

**10.2. Recording Official Time.** The Office of Personnel Management (OPM) requires federal agencies to record or account for official time for employee representational activities. This requirement is not limited solely to activities specifically required by the Statute. OPM uses this data in reports to Congress and in labor studies. Employees are required to record their official

time on the appropriate Time and Attendance form or in an automated time and attendance system. Supervisors approve official time in 15-minute increments.

## Chapter 11

### REQUESTS FOR INFORMATION

**11.1. Requests for Information.** It is Air Force policy to bargain in good faith and provide union representatives with information reasonably necessary to represent employees in accordance with AFPD 36-7, Employee and Labor-Management Relations; and the Federal Service Labor Management Relations Statute. As part of this effort, management has an obligation to furnish information requested, which is reasonably necessary to carry out employee representational duties, to the extent not prohibited by law.

11.1.1. The union is responsible for articulating a particularized need for the requested information. In order to expedite the process, Management may ask for clarifying information in determining if the union has met the particularized need standard.

11.1.2. Management will inform the union whether the information requested is granted or denied and the reason for disapproval. Unless otherwise negotiated in a bargaining agreement, the information is required to be provided in a timely manner which should be determined based on each individual request for information. The requested information needs to be:

11.1.2.1. Required in order for the union to adequately represent the bargaining unit.

11.1.2.2. Normally maintained by the agency in the regular course of business. Management is not required to create documents in order to respond to a request for information.

11.1.2.3. Reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.

11.1.3. Contact the LRO for assistance in responding to union requests for information. If further assistance is required, LRO coordinates with LLFSC for assistance.

## Chapter 12

### UNFAIR LABOR PRACTICES

**12.1. Bases for Unfair Labor Practices.** A ULP charge is a claim that management or the union violated provisions of the Federal Service Labor-Management Relations Statute. It is a ULP for management to:

12.1.1. Interfere with, restrain, or coerce employees in the exercise by the employee of his or his rights.

12.1.2. Encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment.

12.1.3. Sponsor, control or otherwise assist any labor organization, other than to furnish, upon request, customary, and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status.

12.1.4. Discipline or otherwise discriminate against an employee because the employee has filed a grievance, complaint, affidavit, or petition or has given any information or testimony under this chapter.

12.1.5. Refuse to consult or negotiate in good faith with a labor organization as required by statute.

12.1.6. Fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter.

12.1.7. Enforce any rule or regulation (other than a rule or regulation addressing prohibited personnel practices) which is in conflict with any applicable CBA if the agreement was in effect before the date the rule or regulations was prescribed.

12.1.8. Failing to honor employees' automatic dues withholding requests.

12.1.9. Otherwise fail or refuse to comply with any provision of the Statute.

**12.2. Refusing to Bargain in Good Faith .** This includes such actions as management unilaterally making a change in the employees' conditions of employment without affording the union an opportunity to bargain. This charge also addresses management's failure to engage in mid-term bargain, failing to furnish information to the union that they are entitled to, and bypassing the union by dealing directly with the bargaining unit employees regarding their conditions of employment. Management should contact the LRO for assistance with questions.

**12.3. Failing to Cooperate .** If, during negotiations, the parties reach impasse (that is, they are unable to reach agreement through negotiations), either party can request the services of the FSIP. Prior to going to the FSIP the parties are strongly encouraged to engage in mediation. The FSIP is an outside agency responsible for resolving impasse in the Federal government. The LLFSC represents the Air Force in all FSIP proceedings. Once timely invoked, management is required to participate in its proceedings and implement its decision.

**12.4. Compliance with Laws and Regulations.** If a DoD or government-wide rule or regulation (e.g., 5 CFR, Federal Travel Regulations) is issued after the effective date of the parties' CBA and the two conflict, absent some specific contract language, the contract

supersedes the new regulation and must be followed. Once the labor agreement comes up for renewal, it must be brought into conformance with the current regulations. (T0).

**12.5. Most ULPs can be avoided by a general understanding of the statutory rights of the parties and by fostering a positive labor-management relationship.** In this regard, consideration should be given to negotiating a pre-ULP resolution period (e.g. 30 days) in the parties' negotiated agreement. During this pre-ULP resolution period, the parties are expected to review, and hopefully resolve, the potential ULP charge.

## Chapter 13

### GUIDELINES RELATED TO UNFAIR LABOR PRACTICE CHARGES

**13.1. A ULP charge can be filed by an individual, an employee, the union or management.** The respondent to the charges, though, is either management or the union. The vast majority of ULP charges are filed by the union against management. The most common ULP charge alleges that management failed to bargain in good faith, generally for not advising the union of proposed changes to conditions of employment, and unilaterally implementing the changes.

**13.2. Unfair labor practice charges are filed with the FLRA Regional Office.** Regional Directors, under the direction and supervision of the General Counsel investigates the charge to determine if there is sufficient evidence to warrant issuing a complaint. If a complaint is issued, a hearing is set and the parties go before an administrative law judge (ALJ) with the General Counsel prosecuting. The ALJ will issue a decision either finding that a ULP was committed or dismissing the complaint. (T0). If either party is dissatisfied with the ALJ's decision, the case can be appealed to the FLRA.

**13.3. Throughout all the above steps, efforts should be undertaken to resolve the dispute informally, either through local efforts or with the assistance of the Regional Directors Office.** The FLRA have indicated that they will take all necessary steps to assist the parties in informally resolving ULP charges and related disagreements. (T0).

**13.4. The LLFSC attorneys act as agency representatives for ULPs filed by or on behalf of the Air Force with the FLRA, subject to the exceptions listed in Section 2. 3.7 of this Instruction.** Prior to initiating a management ULP, an installation is required to seek approval from the LLFSC. Installations CPOs should refer to their MAJCOM's policies in determining whether MAJCOM approval is also needed to initiate a management ULP. Any union-initiated ULPs received by the installation are required to be forwarded to the LLFSC for handling. LLFSC counsel will be deemed agency representatives for FLRA or FSIP litigation, unless otherwise indicated in this Instruction. (T2).

**13.5. ULP Charges Filed Against Installation Management.** After receiving a ULP charge, the installation LRO/CPO furnishes all pertinent information to LLFSC or appropriate AFMC legal office. A representative is then assigned who issues or coordinates on any correspondence concerning the matter.

13.5.1. The CPO or LRO provide civilian personnel procedural and technical advice to the designated representative in all phases of the case and attends the ULP hearing as a technical advisor. The designated representative represents Air Force management in all ULP proceedings brought by the FLRA against the US Air Force.

**13.6. Reporting Guidelines.** All ULP charges and complaints are to be reported immediately by telephone or email to the LLFSC or appropriate AFMC legal office. The person calling should provide the following information:

13.6.1. The charge

13.6.2. A summary of the allegations, dates and the management officials or other witnesses involved, with a description of any supporting evidence.



13.6.3. A summary of the results of management's investigation into the matter and efforts of the parties to resolve the dispute.

13.6.4. Management's perception of the issues, its position on the merits of the charge or complaint, and its views of the possibility of settlement.

13.6.5. The date the charge was served on management by the charging party.

13.6.6. The date the charge or complaint was received from the FLRA regional office.

13.6.7. Whether a grievance has been filed involving the same or similar matter.

13.6.8. Whether a negotiability request has been filed involving the same or similar matter.

13.6.9. The ULP must have occurred within the past 6 months. (T0).

**13.7. Decisions by the ALJ.** Within one workday of receiving the ALJ decision, the LLFSC or appropriate AFMC legal office designated representative sends a copy to the installation CPO. For precedential cases or cases with Air Force-wide implications, the CPOs are required to send a copy of the ALJ decision to the MAJCOM. The designated representative prepares any exceptions and supporting briefs as explained in FLRA regulations, coordinates with the CPO, and files them with the FLRA. The representative sends informational copies to the installation and/or to the MAJCOM when appropriate. When another party files an exception with the FLRA, the designated representative immediately sends copies to the MAJCOM and/or the installation. If necessary, the designated LLFSC or appropriate AFMC legal office representative prepares the opposition and supporting brief, coordinates with the CPO, and files them with the FLRA within appropriate time limits. The representative sends information copies to the MAJCOM or the installation.

## Chapter 14

### NEGOTIATED GRIEVANCES

**14.1. Procedures.** The following sections describe processing grievances under a negotiated grievance procedure, arbitrating such grievances, and appealing of grievance arbitration awards. These sections also discuss organizational and functional responsibilities and procedural requirements in such matters.

**14.2. Exclusivity .** The CBA includes procedures for settling grievances. Except as provided by section 7121(d) and (e) of the Statute, the grievance procedure negotiated by the parties will be the exclusive procedure for resolving bargaining unit employee grievances which fall within its coverage. (T0).

**14.3. Statutory Exclusions.** These exclusions are listed in section 7121(c) of the Statute.

**14.4. Negotiated Exclusions.** The negotiated grievance procedure covers any grievable issue unless there is an agreement to exclude it. The parties can agree to exclude any matter from the negotiated grievance procedure. If a party proposes to exclude an item, both parties are required to bargain on the matter. If the parties are unable to reach an agreement on a proposed exclusion, follow the procedures of section 7119 of the Statute for the resolution of collective bargaining impasses, including referral to the FSIP.

**14.5. Representation.** A labor organization granted exclusive recognition in a collective bargaining unit has the statutory right, on its own behalf or on behalf of an employee in that bargaining unit, to present and process grievances under the terms of the negotiated grievance procedure.

14.5.1. A bargaining unit employee who requests representation in pursuing a grievance may be represented only by the recognized labor organization or by an individual approved thereby. By law, bargaining unit employees retain the right to submit a grievance under the negotiated procedure on their own behalf and without representation. In that situation, management gives the recognized labor organization the opportunity to be present during the grievance proceedings. Any grievance adjustment with bargaining unit employees representing themselves cannot violate the governing CBA.

14.5.2. At the installation level, the LRO or NAF HRO processes grievances under the negotiated grievance procedure. The LRO or NAF HRO and SJA coordinate their actions in grievances that are appealed to arbitration.

## Chapter 15

### ARBITRATION PROCEDURES

**15.1. Questions and Issues.** The initial issue in arbitration is whether a matter is properly before the arbitrator. The issue can be either procedural or substantive or both and either party presents it as a threshold question. In determining whether an issue is not able to be arbitrated consider: whether the subject is excluded from arbitration by contract or law; whether the grievance or arbitration request is untimely; any other issues that may make the issue improper for arbitration. Unless the CBA specifies otherwise, the arbitrator has the option to decide the issue before hearing the merits of the case, or to defer ruling on that threshold issue until after hearing the merits.

**15.2. Where an individual other than the CPO or LRO serves as management representative in arbitration proceedings, the CPO or LRO provides** policy direction and technical advice to that management representative in all phases of the case. In preparing for arbitration, the CPO and/or the LRO, or a designee, jointly with the management representative, develops the theory of the case, the arguments and the facts to be presented by management at the hearing. The CPO, the LRO, or designee also attends the arbitration hearing as a technical advisor. Using an attorney from the installation SJA office in arbitration proceedings is a matter of local discretion.

**15.3. Submission Agreements.** In preparing for the arbitration hearing, the management representative should attempt to reach agreement with the labor organization on the issues. Present the issues to the arbitrator at the beginning of the hearing. Draft the submission agreement carefully. It determines the scope of the arbitrator's authority and jurisdiction. Without a submission agreement (or some provision of the parties CBA which restricts the arbitrator's authority or jurisdiction), arbitrators generally have the power to frame and describe the issues before them as they see fit.

**15.4. Dating of Arbitration Awards.** Management representatives should specifically request that arbitrators date their awards no earlier than the date they place the awards in the mail; this should allow management to make the most of any time suspense set by the decision. An installation may negotiate such requirement in the parties CBA or it may be made part of a submission agreement in a particular case.

**15.5. Special Reporting Requirements.** When a CPO receives an award (adverse or otherwise) involving an action under 5 USC 4303 or 7512, immediately send two copies of the award using AF Form 112 ARBITRATION CASE SUMMARY to AFPC Civilian Support Branch (AFPC/DP3FS) and one copy to the LFLSC or appropriate AFMC legal office.

## Chapter 16

### EXCEPTIONS TO ARBITRATION AWARDS

**16.1. Grounds for Appeal.** An arbitration award is normally final and binding on the installation and labor organization involved. Compliance with an award is mandatory and enforceable under section 7116 of the Statute. However, under section 7122(a) of the Statute, either party may appeal the award to the FLRA on the grounds that it is contrary to any law, rule, or regulation, or on other grounds similar to those applied by the federal courts in private sector labor-management relations.

**16.2. Installations and AFMC may** write and file the exceptions subject to coordination and approval of the LLFSC and DCPAS. The LLFSC may also file exceptions with the coordination and approval of DCPAS. DCPAS can unilaterally withdraw any exceptions filed by the service components or DoD agencies. The FLRA has no jurisdiction to review arbitration awards which concern adverse actions taken under 5 USC 7512 or actions based on unacceptable performance covered under 5 USC 4303.32.1. MAJCOMs may set additional processing requirements for their installations for all arbitration awards.

## Chapter 17

### BARGAINING UNIT STATUS (BUS) CODES AND DUES WITHHOLDING

**17.1. BUS Codes.** The Federal government uses BUS codes to determine the bargaining unit status of employees and provide general accounting and oversight. They represent collective bargaining rights, entitlements to national consultation rights, and entitlements to official time for representation under federal law. The Civilian Personnel Section (CPS) will use the BUS code in all personnel actions to properly identify employees in bargaining units and non-bargaining units. BUS codes are annotated on the position description, entered in DCPDS and identified on Requests for Personnel Actions and Notification of Personnel Actions. (T0).

17.1.1. The BUS code is a derivative from the Office of Labor Management Relations (OLMR) 121959 six digit identifier. The first two digits of the OLMR identify the agency/component to which the employee is assigned to. The remaining four digits is the number most commonly known as the BUS code.

17.1.2. The code 8888 indicates the position is not eligible to be in a bargaining unit. These positions are designated as non-bargaining based on statutory exclusions under section 7112(b) of the Statute.

17.1.3. The code 7777 indicates the position is eligible to be represented by a union but is not in a certified bargaining unit when a unit has not been successfully organized.

**17.2. Obtaining a BUS Code.** When a new bargaining unit is certified, the LRO submits a request for a BUS code from the AF/A1CM with the Certification of Representative and completed OPM Form 913B. AF/A1CM submits documentation to OPM for BUS code. When the new BUS code is received from OPM, AF/A1CM advises DCPAS, and Installation LRO or NAF HRO of new BUS code. Installation will initiate personnel actions to reflect new BUS code on impacted BUEs. (T0).

**17.3. Dues Withholding.** Dues withholding is not required by the Statute; however, it is negotiable. Management and the union may decide to formalize dues withholding arrangements by including them as part of a basic negotiated agreement or in a separate memorandum of understanding. (See 5 USC §7115)

17.3.1. Membership of the union and dues withholding are voluntary. Employees elect membership by submitting a SF-1187, Request for Payroll Deductions for Labor Organization Dues to the CPO.

17.3.2. It is considered an unfair labor practice for a union to deny representation to nonmembers or denying membership to an employee in a bargaining unit for failure to pay dues.

17.3.3. Employees cancel membership by submitting a SF-1188, Cancellation of Payroll Deductions to the Civilian Pay Office. Local CBA may provide additional guidance for canceling membership dues.

DANIEL R. SITTERLY, SES  
Assistant Secretary of the Air Force  
(Manpower and Reserve Affairs)

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

5 USC 71, *The Federal Service Labor-Management Relations Statute*

5 USC **Chapter 43**, *Performance Appraisal*, Section 4303, January 5, 2009

5 USC **Chapter 71**, *Labor-Management Relations*, January 5, 2009

5 USC **Chapter 75**, *Adverse Actions*, Section 7512 (Actions covered), January 5, 2009

32 USC, *National Guard*, January 5, 2009

Executive Order 13522, *Creating Labor-Management Forums to Improve Delivery of Government Services*, December 9, 2009

5 CFR Part 2423, *Unfair Labor Practice Processing*, January 5, 2009

DoD Directive 1400.25, *DoD Civilian Personnel Management System*, 25 November 1996

DoD 5400.11-R, *Department of Defense Privacy Program*, 14 May 2007

HOI 36-6, *Headquarters Air Force Responsibilities for Consulting with Labor Organizations Having National Consultation Rights with the Air Force*, 4 September 2013

AFPD 36-7, *Employee and Labor-Management Relations*, 29 April 2015

***Prescribed Forms***

AF Form 112, *Arbitration Case Summary*

OPM 913B, *Change Form-Recognition and Agreements*

SF-1187, *Request for Payroll Deductions for Labor Organization Dues*

SF- 1188, *Cancellation for Payroll Deductions for Labor Organization Dues*

***Adopted Forms***

AF Form 847, *Recommendation for Change of Publication*

***Abbreviations and Acronyms***

**ALJ**—Administrative Law Judge

**AFLOA**—Air Force Legal Operations Agency

**AFPOA**—Air Force

**AFPC**—Air Force Personnel Center

**AHR**—Agency Head Review

**BUS**—Bargaining Unit Status

**CPO**—Civilian Personnel Officer

**CPS**—Civilian Personnel Section

**DCPAS**—Defense Civilian Personnel Advisory Service

**DoD**—Department of Defense

**FMCS**—Federal Mediation and Conciliation Service

**FSIP**—Federal Service Impasses Panel

**FLRA**—Federal Labor Relations Authority

**HOI**—Headquarters Operating Instruction

**LLFSC**—Labor Law Field Support Center

**LRO**—Labor Relations Officer

**MAJCOM**—Major Command

**NCR**—National Consultation Rights

**OPM**—Office of Personnel Management

**ULP**—Unfair Labor Practice

### *Terms*

**Bargaining**—the mutual responsibility for management and labor officials, at the activity level, to meet at reasonable times and negotiate in a good faith effort to reach agreement with respect to conditions of employment.

**Bargaining Unit**—the bargaining unit is a group of employees with common interests who are represented by a labor union in their dealings with agency management.

**Collective Bargaining Agreement (CBA)**—an agreement entered into as a result of collective bargaining pursuant to the provisions of the Statute. CBAs set forth some of the conditions of employment of bargaining unit employees, various rights and obligations of the parties to the agreement (i.e., the exclusive representative and the activity or agency), the negotiated grievance procedure, dues withholding provisions, reopeners, as well as the duration of the agreement.

**Conditions of Employment**—those personnel policies, practices, and matters (whether established by rule, regulation, or otherwise) affecting working conditions of civilian employees.

**Covered by Doctrine**—a doctrine under which management does not have to engage in midterm bargaining on particular matters because those matters are already "covered by" the existing agreement.

**Exclusive Representative**—the union that is certified as the exclusive representative of a bargaining unit of employees either by virtue of having won a representation election, or because it had been recognized as the exclusive representative before passage of the Civil Service Reform Act.

**Federal Labor Relations Authority (FLRA)**—the FLRA, also known as the Authority, is responsible for establishing labor policy and guidance in accordance with the provisions of 5 U.S.C. **Chapter 71**. The Authority prescribes criteria for granting national consultation rights and resolves labor disputes, including those related to Unfair Labor Practice complaints.



**Federal Mediation and Conciliation Service (FMCS)**—an independent agency that provides mediators to assist the parties in negotiations.

**Federal Service Impasses Panel (FSIP or Panel)**—entity within FLRA that resolves bargaining impasses, chiefly by ordering the parties to adopt certain contractual provisions relating to the conditions of employment of unit employees.

**Good Faith Bargaining**—a duty to approach negotiations with a sincere resolve to reach a CBA, to be represented by properly authorized representatives who are prepared to discuss and negotiate on any condition of employment, to meet at reasonable times and places as frequently as may be necessary and to avoid unnecessary delays, and, in the case of the agency, to furnish upon request data necessary to negotiation.

**Grievance**—any complaint--(A) by an employee concerning any matter relating to the employment of the employee; (B) by any labor organization concerning any matter relating to the employment of any employee; or (C) by an employee, labor organization, or agency concerning--(i) the effect or interpretation, or a claim of breach, of a CBA; or (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

**Impact and Implementation (I&I) Bargaining**—even where the decision to change conditions of employment (including established practices) of bargaining unit employees is protected by management's reserved rights, there is a duty to notify the union and, upon request, bargain on the procedures that management will follow in implementing its protected decision as well as on appropriate arrangements for employees expected to be adversely affected by the decision. Such bargaining is commonly referred to as "impact and implementation," or "I&I" bargaining, which is the most common variety of midterm bargaining.

**Labor Organization**—an organization composed (in whole or in part) of employees, in which employees participate and pay dues, and which has as a purpose of dealing with an agency concerning grievances and conditions of employment.

**Management Official**—an individual who formulates, determines, or influences the policies of the agency.

**Midterm Bargaining**—all bargaining that takes place while a CBA is in effect.

**National Consultation Rights (NCR)**—the rights afforded certain labor organizations representing substantial numbers of agency employees. To fulfill these rights, the Air Force must inform the labor organization of substantive changes in conditions of employment, give the union time to present its views, consider those views, and give the labor organization written rationale for the final decision. (T-0).

**Official Time**—Official time is the time granted to an employee to perform representational functions on behalf of the union. Official time is granted without charge to leave or loss of pay and is authorized only when the employee would otherwise be in a duty status. Official time is considered hours of work.

**Standards of Conduct for Labor Organizations**—standards regarding internal democratic practices, fiscal responsibility, and procedures to which a union should adhere to qualify for recognition. The Department of Labor has responsibility for making known and enforcing standards of conduct for unions in the Federal and private sectors.

**Impasse**—when the parties have reached a deadlock in negotiations they are said to have reached an impasse in negotiations.

**Unfair Labor Practice (ULP)**—action by either an employer, an employee or union which violates the provisions of labor relations laws, such as refusal to bargain in good faith.