

Department of the Interior Departmental Manual

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Chapter 711: Labor-Management Relations

Originating Office: Office of Human Capital

370 DM 711

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

1.2 **Scope.** Except as otherwise specified in this policy and in law, rule, or regulation, this policy applies to all Bureaus and Offices, including those with a labor organization that holds or seeks to hold an exclusive recognition in a manner consistent with Title 5, Chapter 71.

1.3 **Authority.** 5 U.S.C. Chapter 71, *The Federal Service Labor-Management Relations Statute* (the Statute).

1.4 **Policy.** The Statute establishes a legal right for Federal employees to organize and bargain collectively with agency management over employees' conditions of employment through labor organizations duly certified for such purposes. Management officials are expected to apply the provisions of the Statute to promote cooperative labor-management relations that further the mission and goals of the Department. The Departmental Labor-Management Relations Program is founded on the belief that prompt and equitable settlement of disputes can be best accomplished at the local level by use of flexible and informal procedures.

1.5 **Definitions.**

A. **Agency Head Review.** A statutory requirement contained in 5 U.S.C. § 7114(c) that an agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency for legal sufficiency and conformance with government-wide rules and regulations. For the purposes of application of this provision of law in the Department, the agency head is the Secretary of the Interior, with duties delegated to the Director, Office of Human Capital, Office of the Secretary (OHC). See Section 1.8 for additional details.

B. **Bargaining Unit/Bargaining Unit Employee.** For collective bargaining purposes, a grouping of employees that a labor organization represents or seeks to represent and that the Federal Labor Relations Authority (FLRA) finds appropriate under the criteria outlined in 5 U.S.C. § 7112 (e.g., community of interest, effective dealings, efficiency of operations). Note: Pursuant to 5 U.S.C. § 7112(b) and (c), certain types of employees cannot be included in

bargaining units such as management officials and supervisors; confidential employees; employees engaged in personnel work in other than a purely clerical capacity; employees engaged in intelligence, counterintelligence, investigative or security work which directly affects national security; those employees primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity; and employees engaged in administering the provisions of the Statute

C. Bargaining unit employees. Employees have the right to form, join (i.e. pay membership dues), 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. Except as otherwise provided under the Statute, such right includes the right:—

(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, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

D. Collective Bargaining. Bargaining (negotiating) between labor organizations and employers. Matters appropriate for bargaining include conditions of employment, procedures that management officials observe in exercising any authority under the Statute and, where applicable, wages and pay matters or practices negotiated pursuant to Section 9(b) of the Prevailing Rate Systems Act, Pub. L. 92-392, as preserved by Section 704 of the Civil Service Reform Act.

E. Collective Bargaining Agreement (CBA or Contract). The written negotiated document establishing the terms and conditions of employment and governing the relationship between agency management and a labor organization (exclusive representative).

F. Compelling Need. Where a matter is governed by an agency rule or regulation, no duty to bargain arises until the FLRA has first determined that no compelling need justifies adherence to the regulation. Situations in which a compelling need exists include, but are not limited to, cases where: (1) the rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the agency or primary national subdivision in a manner that is consistent with the requirements of an effective and efficient government; (2) the rule or regulation is necessary to ensure the maintenance of basic merit principles; or (3) the rule or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature. See 5 C.F.R. § 2424.50.

G. Conditions of Employment. Personnel policies, practices and matters affecting working conditions, except for those policies, practices and matters relating to political activities

prohibited under Title 5, Chapter 73, Subchapter III, relating to the classification of any position, or to the extent such matters are specifically provided for by Federal statute.

H. Days. Calendar days, unless otherwise noted.

I. Exclusive Recognition. The designation granted to a particular labor organization, as a result of being certified by the FLRA as the exclusive representative of the employees in a bargaining unit, which provides the right to, among other things, negotiate negotiable aspects of the conditions of employment of bargaining unit employees.

J. Exclusive Representative. The labor organization certified by the FLRA as the exclusive representative of a unit of employees either by virtue of having been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election or because it had been recognized as the exclusive representative before passage of the Statute.

K. Federal Labor Relations Authority (FLRA). The independent agency established by the Statute that is responsible for, among other things: deciding questions of representation; adjudicating unfair labor practices, negotiability appeals, exceptions to arbitration awards, and compelling need disputes; and prescribing criteria for granting national consultation rights. The FLRA is composed of three members and a General Counsel who are nominated by the President and confirmed by the Senate.

L. Federal Service Impasses Panel (FSIP). The independent office (within the FLRA) established by the Statute responsible for resolving bargaining stalemates (impasses) between the parties (labor organizations and management) during negotiations. It is composed of at least seven members appointed by the President.

M. Federal Service Labor-Management Relations Statute (Statute). The law (5 U.S.C. Chapter 71) that provides the basis for the Federal labor relations program and establishes rights and obligations for agencies, management, labor organizations, and employees.

N. Labor Organization. An organization in which employees may participate and may pay dues, and which has the purpose of dealing with agency concerning grievances and conditions of employment.

O. Level of Recognition. The organizational unit(s) of an agency where the labor organization is certified to represent bargaining unit employees. It is where the collective bargaining relationship officially exists.

P. Management Official. An individual employed by an agency authorized to formulate, determine, or influence the policies of the agency.

Q. National Consultation Rights (NCR). Consistent with 5 U.S.C. § 7113, allows certain labor organizations the right to be consulted on any substantive change in conditions of employment proposed by agencies and be permitted reasonable time to present its views and

recommendations regarding the changes. An agency shall consider the views or recommendations before taking its final action and shall provide the labor organization a written statement of its rationale.

R. Negotiability Appeal. A labor organization's challenge to management's written declaration that a labor organization's bargaining proposal is non-negotiable. Challenges (appeals) are filed with the FLRA under a process described in 5 CFR Part 2424.

S. Open Period. The period of time prior to the termination date of a collective bargaining agreement during which either management or the labor organization may notify the other of their desire to reopen or terminate the agreement, pursuant to the Statute or applicable CBA.

T. Supervisor. An agency employee who has authority to hire, assign, direct, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, and to decide grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. With respect to any unit including firefighters or nurses, the term only includes those individuals who devote a preponderance of their employment time to exercising such authority.

U. Unfair Labor Practice (ULP). A violation of a provision(s) of the Statute as defined under 5 U.S.C. § 7116.

V. Union. See Labor Organization.

1.6 Responsibilities.

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

B. Office of Human Capital, Office of the Secretary. Oversees the Department's Labor Management Relations Program and is responsible for the following and all other implied duties related to administering the Program:

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

(2) Coordinating with ELLU on legal matters relative to the Labor-Management Relations Program, including issues involving pending litigation or that require legal expertise and/or guidance.

(3) Guiding, supporting and directing Bureaus and Offices in any phase of activities dealing with labor-management relations matters. (Legal issues, including proposed or pending litigation, must be coordinated with ELLU).

(4) Establishing procedures to ensure the prompt receipt of information, reports, and correspondence regarding significant labor-management issues, and in consultation with ELLU on legal issues.

(5) Reviewing and approving (or disapproving) collective bargaining agreements under Agency Head Review.

(6) Establishing Departmental labor-management programs and policies designed to promote positive labor-management relations that further the mission and goals of the Department and decrease costs associated with unproductive relationships.

C. Office of the Solicitor, Employment and Labor Law Unit (ELLU) is responsible for:

(1) Providing legal representation and/or guidance to Bureau/Office management/human resources for third-party litigation (e.g., hearings before the FLRA or an arbitrator) and pending litigation, or other matters that require legal expertise and/or guidance.

(2) Providing legal representation and/or guidance to Bureau/Office management/human resources regarding the collective bargaining process, including legal sufficiency review of CBAs as appropriate.

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

D. Heads of Bureaus and Offices are responsible for:

(1) Implementing the DOI Labor-Management Relations Program consistent with this policy, the Statute, and applicable Executive Orders (EOs) and/or OPM regulations.

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

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

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

E. Managers and Supervisors. Managers and supervisors are responsible for meeting their obligations under the Statute and coordinating labor-management relations activities with the applicable Bureau or Office point of contact for labor-management relations.

1.7 Negotiations.

A. Renewal. At least 30 days prior to the start of the open period, the appropriate Bureau or Office headquarters labor relations office, or local labor relations designated point of contact, must review the contract. This review is for the purpose of determining if there are any conflicts between the contract's provisions and applicable laws, EOs, regulations of other appropriate authorities outside the Department, or Departmental policy issued after the contract was executed (except for provisions preserved for bargaining under Section 704 of the Civil Service Reform Act and Section 9(b) of the Prevailing Rate Systems Act). The contract should also be reviewed to determine if there is any language identified by management as being burdensome, impractical or written in such a way that is difficult to administer and/or interpret. OHC-Labor Relations and/or ELLU should be consulted during this process as needed.

If a conflict/problem exists, the management officials at the negotiating level, in consultation with the appropriate Bureau or Office headquarters labor relations point of contact, should take appropriate steps to notify the labor organization of its intent to reopen and renegotiate the CBA at the earliest opportunity, which is normally during the open period of the CBA, and/or terminate any provision(s) inconsistent with law, rule or regulation, as applicable. A copy of this notification must be simultaneously provided to OHC-Labor Relations.

If no conflicts or concerns are identified, the appropriate management officials must provide the Director, OHC, written notification that the CBA will not be re-opened. Such notification must certify that:

(1) there are no conflicts between the provisions of the CBA and applicable laws, EOs, regulations, other appropriate authorities outside DOI, or DOI policy issued after the agreement was executed (except for provisions preserved for bargaining under Section 704 of Public Law 95-454 and Section 9(b) of Public Law 92-392); and

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

B. Notification. At least thirty (30) days before starting negotiations for new or modified collective bargaining agreements subject to agency head review, the local labor relations office must notify the appropriate Bureau or Office headquarters labor relations office, which must in turn provide written notification to OHC-Labor Relations that contract negotiations are anticipated. The name and contact information for management's designated chief negotiator, along with the anticipated management negotiating team members, must be provided to and approved in advance by OHC-Labor Relations.

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

C. Compelling Need. Where a matter is governed by an agency rule or regulation, no duty to bargain arises until the FLRA has first determined that no compelling need justifies adherence to the regulation. Situations in which a compelling need exists include, but are not limited to, cases where: (1) the rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the agency or primary national subdivision in a manner that is consistent with the requirements of an effective and efficient government; (2) the rule or regulation is necessary to ensure the maintenance of basic merit principles; (3) the rule or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature. Disputed compelling need assertions may be submitted to the FLRA for resolution, after consultation with OHC and ELLU as appropriate.

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

Additionally, certain stand-alone agreements may be reviewed, on a case-by-case basis, should OHC-Labor Relations determine they may pertain to matters that have or potentially have Department-wide impact. OHC-Labor Relations will notify the Bureau or Office headquarters labor relations offices whenever such reviews are required.

All agreements subject to agency head review must be submitted to the Director, OHC (Attn: OHC-Labor Relations) for review and approval using the following procedures:

A. The Bureau or Office headquarters labor relations office, or local labor relations designated point of contact, must submit an advance draft copy of any agreements nearing execution to OHC-Labor Relations for review and preliminary approval or notification of negotiability concerns that may result in disapproval. A copy must simultaneously be provided to the Bureau or Office headquarters labor relations office, as appropriate.

B. Upon execution of the CBA, the Bureau or Office headquarters labor relations office, or local labor relations designated point of contact, must submit to OHC-Labor Relations the executed (signed and dated by the parties to the contract to include electronic signatures where applicable) collective bargaining agreement *within three business days* of contract execution. This submission must include complete contact information for both the management and labor organization representatives (generally, the chief negotiators). A copy of the executed CBA must also be sent to the Bureau or Office headquarters labor relations office.

C. Unless the previously approved ground rules specifically state otherwise, the execution date of the CBA is the date the last labor organization or management signature is obtained. The execution date on the agreement must not be entered until ALL necessary signatures of the labor organization and management representatives are obtained. The signature page must be a separate page and include an "Agency Head Approval" block (signature/date) for the Director, OHC.

D. At the same time the CBA is submitted for agency head review, but no later than the expiration of the agency head review period, the Bureau or Office headquarters Human Resources Director or Human Capital Officer, or his/her designee, must certify via memorandum to the Director, OHC (Attn: OHC-Labor Relations) that an appropriate human resources/human capital management official has reviewed the agreement (see 1.8A). The memorandum must note any areas of concern regarding negotiability issues, or recommend the agreement be approved if no concerns were identified.

E. After receipt of the agreement for agency head review, OHC-Labor Relations will, as appropriate, provide a copy of the executed agreement to ELLU to review for legal sufficiency.

F. OHC-Labor Relations, with input from ELLU as appropriate, will complete its review of the executed contract within 30 days of the execution date and issue the agency head's approval or disapproval to the originating office, with a copy to the Bureau or Office headquarters labor relations office.

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

(2) If the parties agree to changes that will bring the agreement into compliance prior to the expiration of the 30-day review period, a replacement page(s) reflecting the agreed upon changes and initialed by representatives for both parties must be provided prior to the expiration of the 30-day review period for insertion into the final contract. Otherwise, the agreement will be disapproved.

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

1.9 Wage Supplements to Basic Collective Bargaining Agreements. Wage agreements and supplements, including wage-related agreements (for example, MOUs regarding wage survey methodology) will be signed and dated by the appropriate labor-management negotiating team member(s) and by the management officials exercising authority at the bargaining level.

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

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

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

1.10 Negotiability Appeals. OHC-Labor Relations must be promptly informed (within three business days) of any negotiability appeals filed by a labor organization in response to management's written allegation that a bargaining proposal is non-negotiable under the Statute.

A. The Bureau or Office headquarters labor relations office, or local labor relations designated point of contact, must consult with OHC-Labor Relations and/or ELLU prior to filing statements of position or responses to labor organization replies.

B. Copies of all documents submitted to the FLRA, and/or FLRA Orders and Notices received by the local labor relations office, must be submitted to OHC-Labor Relations and the Bureau or Office headquarters labor relations office within three days of receipt.

1.11 Other Third-Party Matters.

A. Representation Issues. OHC-Labor Relations must be notified by the Bureau or Office headquarters labor relations office and/or local labor relations designated point of contact of any labor organization organizing efforts, prior to the filing of any petition by management, and of any pending elections.

In cases where there is doubt as to whether the unit that a labor organization seeks to organize is an appropriate unit under the Statute and/or a hearing may be necessary, OHC-Labor Relations and ELLU must be promptly notified for consultation.

Copies of any Certifications of Representative issued by the Authority must be sent to OHC-Labor Relations within three days after receipt. OHC-Labor Relations will promptly notify OPM and request a bargaining unit status code which, once assigned, will be provided to the Bureau or Office headquarters and/or local labor relations designated point of contact.

B. Arbitration/Impasses/Unfair Labor Practices. Normally, notification to OHC-Labor Relations of pending arbitration hearings, impasse procedures before the FSIP, and ULPs filed by a labor organization is not required. However, in the event the Bureau or Office headquarters

labor relations office and/or local labor relations designated point of contact have concerns regarding a case and/or does not believe there is adequate expertise to address the matter, that office(s) will consult with OHC-Labor Relations and ELLU. These offices will make a joint decision as to how to proceed. Bureaus and Offices should use good judgment in determining if and when OHC-Labor Relations and/or ELLU should be notified of pending issues (i.e., issues that could have Department-wide implications).

Any arbitration decision that management wishes to appeal to the FLRA must be brought to the attention of OHC-Labor Relations and ELLU no more than 10 days following receipt of the decision for consultation/recommendation.

Administrative Law Judge decisions that management wishes to appeal to the FLRA (or appeals of FLRA decisions to a circuit court) must be brought to the attention of OHC-Labor Relations and ELLU no more than 10 days following receipt of the decision for consultation/recommendation.

Bureaus and Offices may only file management-initiated ULP charges after discussion with and approval of OHC-Labor Relations.

C. Notification. Once rendered, a copy of all third-party decisions issued by the FLRA, FSIP, circuit courts and/or arbitrators must be provided to OHC-Labor Relations within 10 days of receipt. OHC-Labor Relations will forward a copy to ELLU and/or OPM as appropriate, for recordkeeping/information purposes and/or possible appeal where applicable.

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

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

B. Any labor organization having NCR with the Department will be informed of the proposed change and shall be permitted reasonable time (normally 15-30 days) to present its views and recommendations regarding the change. If provided, any labor organization comments must be considered by the Department before taking final action and the labor organization providing the input must receive a written statement of the reasons for taking the final action.

C. Any Bureau or Office having NCR with any labor organization must follow the procedures for notification as outlined in the Statute and/or any applicable NCR agreement.

1.13 Communication with Special Organizations. The exclusive recognition of labor organizations does not affect the special relationship the Department has with other lawful

organizations, such as professional groups or employee organizations provided for in 5 CFR Part 251. However, consultations with these organizations should not be on matters of general labor-management policy and should be limited to matters within the direct interest of members of the organization. Consultation/discussion may not concern matters that may impact general working conditions of bargaining unit employees, unless the exclusive representative has been given an opportunity to be present at such discussions.