



OMD

Supervisor's Guide  
To Labor Relations

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## I. INTRODUCTION

Managing and supervising in an organization where a union is, or seeks to be, the exclusive representative of employees presents special challenges to managers and supervisors. The employees have the right to join, refuse to join, support, or oppose the union. The union, in turn, has certain rights under both the statute and its negotiated agreement with the agency. Managers and supervisors must accord the union and employees the rights to which they are entitled while maintaining neutrality in relations with the union.

This issuance provides intra-management guidance within the meaning of sections 7114(B)(4)(C) and 7132(A) of Chapter 71. It is not designed for general publication and its distribution is limited. Information is based on best available information at the time of distribution.

It is intended to help managers and supervisors avoid improperly discouraging or encouraging employee participation in labor-organization activities and to accord labor organizations the rights and services to which they may be entitled under law or negotiated agreement.

## II. EMPLOYEE PARTICIPATION IN LABOR ORGANIZATION ACTIVITIES

### A. EMPLOYEE RIGHTS

#### (1) Right to Join or Not to Join

All employees have the right, freely and without fear of penalty or reprisal to form, join, or assist any labor organization or to refrain from any such activity pursuant to 5 U.S.C. 7102.<sup>1</sup> It should be noted that this includes joining more than one union at the same time.

#### (2) Right to Act for a Labor Organization

Federal employees are free to assist any labor organization. This freedom, subject to the limitation discussed in Part II.B. below, extends to participating in the management of the union and acting in the capacity of a union representative and includes presenting union views to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities.

Active participation in legitimate union activities does not immunize an employee from disciplinary action for employee misconduct when such discipline is warranted; e.g., when an employee violates an agency rule.

#### (3) Right to Engage in Collective Bargaining

Federal employees have the right to engage in collective bargaining with respect to conditions of employment as defined in 5 U.S.C. 7103(a)(14) through representatives chose by employees under 5 U.S.C. 7111.

#### (4) Right to Support or Oppose Labor Organizations

An agency must permit all employees of the activity or installation, except those to whom special limitations apply, (see Part 11.8.) to support or oppose labor organizations within the following guidelines:

##### (a) Solicitation of Support

Employees have the right to engage in solicitation for or against a labor organization during non-working time in non-work areas. Employees should also be permitted to engage in normal person-to-person communications regarding labor organizations at the work place. Discussions between

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<sup>1</sup> "Employee", "Labor Organization", and other significant terms are defined in Appendix A.

employees concerning labor relations should not be treated differently from discussions concerning any other matter. However, such discussions should not be permitted to interfere with agency operations.

(b) Restriction on Solicitation

Solicitation rights may be restricted where necessary to maintain operations and/or discipline, or where special circumstances exist based on the nature of the employee's work requirements. The agency should be prepared to justify any such restrictions upon challenge in an unfair labor practice proceeding. Where employee emotions are at a high pitch based upon prior labor relations incidents or a similar situation, the potential for disciplinary problems may provide a basis for restricting solicitation.

Because paid time of employees is for government work, an agency must prohibit solicitation during the working time of employees, whether the employee is the person soliciting or is the one solicited. However, it may not prohibit solicitation during break periods or lunchtime, even though employees may be paid during these times.<sup>2</sup>

Any restrictions regarding solicitation for or against a labor organization must be uniformly enforced against all employees. No distinction may be drawn between those employees who support and those who oppose labor organizations or any particular union. Management should not become involved in espousing or supporting either viewpoint, but should maintain a neutral position.

(5) Right to Wear Insignia

Employees have the right on agency premises to wear insignia supporting or opposing a labor organization. The fact that the labor organization is or is not a recognized union does not restrict this right.

The right to wear insignia may be limited in particular circumstances, as where regulations govern the wearing of uniforms by employees, or where the agency can clearly show that a restriction is necessary for reasons of health, safety, discipline or the special nature of the agency's operations.<sup>3</sup>

Restrictions may apply in hospital operating rooms, in special assembly areas where cleanliness is paramount, in machine

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<sup>2</sup> Oklahoma City Air Logistics Center (AFLC), Tinker Air Force Base, Oklahoma, and American Federation of Government Employees, AFL-CIO, Local 916, 6 FLRA No. 32. See also Department of the Air Force, Air Force Plant Representative Office, Detachment 27, Fort Worth, Texas, 5 FLRA No. 62.

<sup>3</sup> United States Army Support Command Fort Shafter, Hawaii and Service Employees International Union, Local 556, AFL-CIO, 3 FLRA No. 121.

operations where ornaments may be caught in the machine, in areas where fire hazards restrict ornamentation, or where agency regulations prohibit the wearing of any insignia on uniforms prescribed by the agency, e.g., police, guards, and firefighters.

Where an employee has direct and frequent contact with the public, the size of the insignia and their use may be subject to reasonable restrictions. Insignia which serve to create emotional reactions and disciplinary problems may, under special circumstances be subject to restrictions.

Agency rules regarding the right to wear insignia must be administered in a consistent and nondiscriminatory fashion.

(6) Employee Right to Distribute Campaign Material

Employees have the right to distribute material for or against a labor organization in nonwork areas during nonwork time. This right exists regardless of the identity of the labor organization.

Restrictions may be imposed where they are clearly warranted by fire or safety hazards, where they are necessary to maintain production and/or discipline, or where they are required by regulations of appropriate authorities which do not contravene the purpose of the Statute. In the interest of health and safety, reasonable restrictions regarding littering may be imposed on the distribution of campaign literature. Any restrictions must be reasonable, nondiscriminatory and not designed to obstruct the employees' right under the Statute to organize.

(7) Right To File Personal Grievances

Any employee, regardless of labor organization membership, may bring matters of personal concern to the attention of appropriate officials in accordance with applicable law, rules, regulations, and established agency policies, and may choose his or her own representative (subject to the selected individual's eligibility, willingness, and availability) in a grievance under the agency procedure.<sup>4</sup> In processing a grievance under a negotiated grievance procedure, the employee may be represented only by the exclusive representative even if the exclusive representative is willing to allow non-union representation.<sup>5</sup> The employee may also decline any

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<sup>4</sup> 5 U.S.C. 7114(a)(5): Note, however, that only matters excluded from the negotiated procedure may be raised under the agency grievance procedure. 5 U.S.C. 7121(a)(1) provides that the negotiated procedure is the exclusive procedure for matters which fall within its coverage.

<sup>5</sup> National Federation of Federal Employees, Local 1001 and Department of the Air Force, Vandenberg Air Force Base, California, 15 FLRA No. 154.

representation when processing a grievance under the negotiated procedure.

B. LIMITS ON PARTICIPATION

(1) General Limitation

The Statute does not authorize supervisors, management officials, or confidential employees as defined In the Statute to participate in the management of a labor organization or to act as representatives of a labor organization.<sup>6</sup> It does not authorize other employees to participate in such activities if participation would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with official duties of the employee.

(2) Specific Limitations

To avoid conflicts of interest or for other reasons, bargaining units containing the following kinds of employees are not appropriate [5 U.S.C. 7112(b)].

- (a) Supervisors as defined in 5 U.S.C. 7103(a)(10) except as provided by 5 U.S.C. 7135;<sup>7</sup>
- (b) Management officials as defined in 5 U.S.C. 7103(a)(11);
- (c) Confidential employees as defined in 5 U.S.C. 7103(a)(11);
- (d) Employees engaged in personnel work in other than a purely clerical capacity [5 U.S.C. 7112(b)(3)].
- (e) An employee engaged in administering the provisions of 5 U.S.C. Chapter 71 - Labor Management Relations [5 U.S.C. 7112(b)(4)];
- (f) Both professional employees and other employees pursuant to 5 U.S.C. 7112(b)(5), unless a majority of the professional employees vote for inclusion in the unit;
- (g) Any employee, pursuant to 5 U.S.C. 7112(b)(6), engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security;<sup>8</sup>

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<sup>6</sup> 5 U.S.C. 7135(a)(2) provides for the continuation of recognition of certain units of management officials or supervisors recognized at the time the statute took effect.

<sup>7</sup> Ibid

- (h) Any employee pursuant to 5 U.S.C. 7112(b)(7), 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.<sup>9</sup>

In addition, any employees engaged in administering any provision of a labor-management relations law may not be represented by a labor organization Air-h also represents other employees under the Statute or which is affiliated directly or indirectly with such an organization. (5 U.S.C. 7112(c)]

### C. INTERFERENCE WITH EMPLOYEES' RIGHTS

#### (1) Agency Neutrality

The agency must maintain a neutral position regarding employee membership in, activities on behalf of, or opposition to a labor organization. However, agency managers may express personal views, arguments, opinions or make any statements which (1) publicize the fact of a representational election and encourage employees to exercise their right to vote in such election, (2) correct the record with respect to any false or misleading statement made by a person, or (3) inform employees of the Government's policy relating to labor-management relations and representation, provided the expression contains no threat of reprisal or force or promise of benefits or is not made under coercive conditions [5 U.S.C. 7116(e)3].

#### (2) Informing Employees of Their Rights

The head of the agency is required to take appropriate action to assure that employees are apprised of the rights accorded to them. This responsibility is set forth in Section I of Executive Order 11491 which continues In effect under the provisions of 5 U.S.C. 7135(b).

#### (3) Prohibited Agency Interference

Agencies are prohibited from interfering with, restraining or coercing employees in the exercise of the rights discussed here in. For example, an agency may not encourage or discourage membership in a labor organization by its hiring, tenure, or

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<sup>8</sup> In addition, the President has authority under 5 U.S.C. 7103(b)(1) and (2) to exclude agencies and subdivisions of agencies for national security reasons.

<sup>9</sup> Ibid

promotion practices or through other conditions of employment. Also, the agency may not discipline or otherwise discriminate against an employee because he or she has filed a complaint or given testimony under 5 U.S.C. Chapter 71, (See Section 7116). Such interference with employee rights under the Statute would constitute an unfair labor practice.

(4) Prohibited Negotiated Agreement Provisions

For example, a negotiated agreement provision prohibiting solicitation by employees during non-working time, unless based upon discipline or production problems, would be improper. Similarly, a provision prohibiting distribution of material in non-working areas would be improper unless based on fire, safety, health or special problems. The agency may prohibit employees from entering a work area for job related reasons. For example, an agreement at a military installation may properly prohibit employees whose shift has ended from entering restricted areas for purposes of solicitation, assuming there are other adequate available means of reaching employees.

D. EXAMPLES OF UNFAIR LABOR PRACTICES BY MANAGEMENT

As described above management is prohibited from interference with the employee's right to form, join, and assist a labor organization or to refrain from such activities. In addition management sponsorship, control or assistance to a labor organization is also improper. The following list illustrates conduct, which may be found to be an unfair labor practice under 5 U.S.C. 7116(a) of the Statute, but should not be considered all-inclusive.<sup>10</sup>

- (1) Reprisals, benefits, threats of reprisal or promises of benefits, expressed or implied, oral or written, which relate to or are contingent upon an employee's membership in or lawful activities on behalf of a labor organization;
- (2) Interrogation, surveillance (spying), or actions which give the impression of such activities, designed to determine the union membership or activities of employees, except to the extent that an Investigation may be conducted by an agency concerning the involvement of employees in illegal strikes or other forms of unlawful job action;

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<sup>10</sup> Unfair labor practice procedures are discussed in Management Practices Manual, Unfair Labor Practices in Federal Labor-Management Relations, issued September, 1981. A limited number of copies is available from the U.S. Office of Personnel Management, Office of Employee, Labor and Agency Relations, LAIRS Section, 1900 E Street NW, Washington, D.C. Copies must be requested through your agency headquarters labor relations office.

- (3) Solicitation of employees to join or withdraw from a labor organization;
- (4) Any other conduct or action designed to encourage or discourage membership in or activities on behalf of a labor organization.
- (5) Dealing with employees individually when an obligation exists to consult, confer or negotiate with a representative of the employees.

### III. SERVICES TO LABOR ORGANIZATIONS

#### A. SPONSORSHIP, CONTROL OR ASSISTANCE TO LABOR ORGANIZATIONS

(1) Management Involvement

While the Statute gives all employees the right to join or refrain from joining labor organizations, it specifically prohibits sponsorship, control, or assistance to such organizations by agencies. [5 USC 7116(a)(3)] Supervisors are considered management representatives. Consequently, their membership in a labor organizations requires the exercise of care so that their activities in such organizations do not constitute a basis for an unfair labor practice charge.

(2) Examples of Prohibited Sponsorship, Control or Assistance

Some activities which should be considered prohibited sponsorship, control or assistance to a labor organization (or an employee council, which meets the definition of a labor organization) are:

- (a) management or supervisory participation in the formation of the labor organization;
- (b) management officials or supervisors serving as officers of the labor organization;
- (c) involvement by management in the nomination or election of officers;
- (d) agency financial support to the labor organization;
- (e) providing space or facilities for a labor organization for purposes of solicitation or campaigning, where the organization has not filed a petition or intervened and there is an existing recognized labor organization, or where there is an election pending;
- (f) favoring one labor organization as opposed to another, where both unions have equivalent status<sup>11</sup>
- (g) urging employees to form their own labor organization.

(3) Employee Advisory Committees and Councils

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<sup>11</sup> 5 U.S.C. § 7116(a)(3) The term "equivalent status" is not defined in the law. Generally, a union achieves equivalent status when it raises a question concerning representation by filing a representation petition or becoming an intervenor in a pending representation petition.

Any employee advisory committee or employee council which exists either in whole or in part for the purpose of dealing with managers concerning employee grievances, personnel policies and practices, or other matters affecting the working conditions of employees is not a labor organization within the definition of 5 U.S.C. 7103(a)(4) if it is sponsored, controlled, assisted, or is in any way dominated by agency management. Note that the use of such a committee to bypass the exclusive representative in dealing with employees is an unfair labor practice.

(4) Customary and Routine Services

The agency may furnish a labor organization, 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" [5 U.S.C. 7116(a)(3)].

B. USE OF OFFICIAL DUTY TIME AND TRAVEL AND PER DIEM

The use of official duty time by union officials for various purposes is governed by 5 U.S.C. 7131.<sup>12</sup> Generally, the following principles apply.

(1) Negotiations at the Level of Exclusive Recognition

Bargaining unit employees representing a union in the negotiation of a collective bargaining agreement at the level of exclusive recognition are authorized official time for that purpose during the time they would otherwise be in a duty status.<sup>13</sup> The number of employees for whom official time is authorized may not exceed the number of persons designated by the agency as representing the agency in the negotiations. (5 U.S.C. 7131(a)). Any additional employees engaged in negotiations on the union's behalf must be in nonpay status or on approved leave.

(2) Negotiations Below the Level of Exclusive Recognition

In its Interpretation and Guidance, 7 FLRA No. 105, the Authority ruled that an agency is not required to grant official time to employees engaged in negotiating a local agreement which supplements a national or controlling (master) agreement unless official time is agreed to by the parties at the level of exclusive recognition. However, the D.C. Circuit Court of Appeals has ruled that bargaining unit employees engaged in such

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<sup>12</sup> FPM Letter 711-161 sets forth requirements for recording the use of official time.

<sup>13</sup> Interpretation and Guidance, 2 FLRA No. 31. Interpretation and Guidance, 7 FLRA No. 105.

negotiations are authorized official time in the same manner as those who negotiate at the level of exclusive recognition.<sup>14</sup>

(3) Preparation for Negotiations

Preparing for negotiations does not constitute internal union business under 5 U.S.C. 7131(b) and official time for this activity is negotiable under 5 U.S.C. 7131(d).<sup>15</sup> The use of official time to prepare counter-proposals or to prepare for impasse proceedings also is negotiable under 5 U.S.C. 7131(d).<sup>16</sup>

(4) Travel and Per Diem for Negotiations

Union representatives engaged in negotiations are not entitled to travel and per diem.<sup>17</sup> This does not preclude an agency from making travel and per diem payments to employees representing the union during negotiations if the agency determines that the payment of such travel and per diem expenses is in the primary interest of the government.

(5) Non-Bargaining Unit Employee Representatives in Negotiations

An agency is not required to grant official time to employees engaged in negotiations on behalf of a union if they are not members of the bargaining unit to which the right to negotiate the agreement applies.<sup>18</sup>

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<sup>14</sup> American Federation of Government Employees, AFL-CIO v. Federal Labor Relations Authority, D.C. Circuit Court of Appeals, Case No. 82-1272.

<sup>15</sup> American Federation of Government Employees, AFL-CIO, Local 1692, and Hqs. 323<sup>rd</sup> Flying Training Wing (ATC), Mather Air Force Base, California, 3 FLRA No. 47.

<sup>16</sup> Federal Uniformed Firefighters, Local F-169, and U. S. Army Armament Research & Development Command, Dover, New Jersey, 3 FLRA No. 49.

<sup>17</sup> Bureau of Alcohol, Tobacco and Firearms v. Federal Labor Relations Authority, Supreme Court of the United States No. 82-799. FPM Letter 711-162 contains additional guidance on the interpretation and application of this decision.

<sup>18</sup> United States Air Force, 2750<sup>th</sup> Air Base Wing Headquarters, Air Force Logistics Command, Wright-Patterson AFB, Ohio and Wright-Patterson AFB Fire Fighters Local F-88, International Association of Fire Fighters, AFL-CIO, 7 FLRA No. 118. See Also, American Federation of Government Employees, AFL-CIO, Local 2096 v. Federal Labor Relations Authority, United States Court of Appeals for the Fourth Circuit, Nos. 82-1897(L) and 83-1894.

(6) Official Time for Other Representational Activities

Time for such activities as representing employees in grievances is subject to negotiations. [5 U.S.C. 7131(d)]. Overtime for representational activities is permissible only if the employee already is on overtime.

(7) Overtime Pay for Negotiations

The Provision in the statute entitling representatives to official time for negotiations apply only to time they otherwise would be in duty status. There is no provision for overtime for union representatives involved in negotiations.

(8) Internal Union Business

The use of official duty time for internal union business, including the solicitation of membership or the collection of labor organization dues, is prohibited. [5 U.S.C. 7131(b)]

(9) Preparation of Reports Required by 5 U.S.C. 7120(c)

The preparation of required financial and other reports required by 5 U.S.C. 7120(c) is not internal union business and the use of official time for this purpose is negotiable under 5 U.S.C. 7131(d).<sup>19</sup>

(10) Union Sponsored Training

Official time for attendance at union sponsored training is negotiable.<sup>20</sup>

(11) Distribution of Information Concerning the Union

Although membership solicitation is prohibited on official time. the distribution of information which simply notifies employees that the union is their exclusive representative, and which identifies the chapter or local as well as the national union with which the local is affiliated, is not internal union business and the use of official time for this purpose is negotiable under 5 U.S.C. 7131(d).<sup>21</sup>

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<sup>19</sup> American Federation of Government Employees, AFL-CIO, Local 2823 and Veterans Administration, Regional Office, Cleveland, Ohio, 2 FLRA No. 1.

<sup>20</sup> American Federation of Government Employees, AFL-CIO, Local 1733, and Department of the Interior, National Park Service, National Capital Region, Washington, D.C., 5 FLRA No. 40.

<sup>21</sup> National Treasury Employees Union and Department of the Treasury, Internal Revenue Service, 6 FLRA No. 97.

C. USE OF AGENCY FACILITIES

(1) Customary and Routine Services and Facilities

Although an agency is prohibited from sponsoring, controlling, or otherwise assisting any labor organization it may "...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." [5 U.S.C. 7116(a)(3)]

(2) Other Services

The provision of facilities and services to an exclusive representative is negotiable.

(3) Dues Withholding

An agency must honor a bargaining unit employee's written dues allotment. The allotment is honored without cost to the union and may not be revoked for at least one year. [5 U.S.C. 7115(a)]<sup>22</sup> Because the entitlement to dues withholding applies only to bargaining unit employees, dues withholdings should be terminated immediately when the employee leaves the bargaining unit.

(4) Use of Bulletin Boards

An agreement negotiated by an agency and a recognized labor organization may include a provision for the use by the labor organization of bulletin boards within the agency's control. Such a privilege must conform to both appropriate agency regulations, subject to a compelling need challenge, and to GSA regulations. [See 41 CFR 101-20.7] Where there is no negotiated agreement, the agency may grant bulletin board privileges and impose reasonable restrictions governing their use. Those restrictions must be interpreted and applied in a fair and impartial manner with respect to unions having equivalent status.

(5) Access to Facilities by Non-Employees

Except in unusual circumstances, representatives of labor organizations and other individuals who are not employees of the installation or activity need not be given any access to agency facilities unless access is provided for by an agreement with a recognized labor organization or pursuant to established agency policy.

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<sup>22</sup> Interpretation and Guidance, FLRA No. O-PS-1. See also U.S. Army Material Development and Readiness Command, Warren, Michigan and Local 1658, American Federation of Government Employees, AFL-CIO, 7 FLRA No. 30.

D. USE OF AGENCY FACILITIES AND PREMISES DURING ORGANIZING CAMPAIGNS AND CHALLENGES

(1) Organizing Campaigns

In permitting labor organizations to use agency facilities for an organizing campaign, the following factors should be considered:

- (a) Where an agency's employees are located in an area not readily accessible, live on the agency's premises, or are widely dispersed, consideration should be given to the ability of outside nonemployee representatives to communicate with employees.
- (b) Facilities to conduct an organizing campaign must be provided on an equal basis to all labor organizations having "equivalent status," i.e., petitioners and intervenors in representation proceedings.
- (c) In a unit with an incumbent exclusive representative, the use of facilities by an outside labor organization to conduct an organizing campaign may not be granted unless the labor organization has filed a petition for or intervened in a representation proceeding.
- (d) In a unit with an exclusive representative, an outside labor organization must be afforded access to agency facilities or services for the purpose of communicating with employees when no other means of contact is available and the agency has determined that the requesting union has made a diligent, but unsuccessful, effort to communicate with employees<sup>23</sup>; and
- (e) Before authorizing access to agency facilities by a labor organization for the purpose of solicitation and distribution of organizational or electioneering literature, the agency should reach a clear understanding with the organization on the duration, location, and nature of such activity.

(2) Challenges

(a) Use of Agency Facilities by Outside Labor Organizations

An agency may not grant the use of its facilities to an outside labor organization to solicit members or conduct an

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<sup>23</sup> The FLRA has issued no decisions on this issue under CSRA. See, however the Authority's discussion of the issue in a case under EO 11491. Department of Transportation, Federal Aviation Administration, Washington, D.C., and Professional Airway System Specialists, 2 FLRA No. 48.

organizing campaign when there is an incumbent exclusive representative, unless the outside organization has achieved equivalent status with the recognized labor organization by having either filed a petition or intervened in a representation proceeding. With respect to the use of its premises by labor organizations which have achieved equivalent status, an agency should not alter its policies or practices during a challenge to the status of the incumbent union.

(b) Rights of Incumbent Labor Organizations

The exclusive representative's existing rights regarding use of bulletin boards and use of shop stewards should be continued during the campaign and electioneering period. The fact that the exclusive representative enjoys certain advantages over the challenging organizations with respect to non-electioneering matters is justified by the fact that these advantages flow from the exclusive's continued status as the exclusive representative of the unit employees and/or as party to an agreement which provides certain rights and privileges which are necessary for the administration of the agreement and for the performance of its representation function.

(c) Agency Neutrality

The agency should, however, be careful not to give favored treatment to one of several competing labor organizations when there is no agreement or where an agreement does not provide for use of agency facilities. For example, an exclusive labor organization which does not have bulletin board use under its agreement should not be given the privilege after a challenge has been made to its representative status, unless the challenging petitioner or intervenor is given the same privilege.

Of primary consideration in agency management's dealing with labor organizations seeking recognition is that there be no disparate treatment between labor organizations having equivalent status [see 5 U.S.C 7116(a)(3)], nor between employees who support unions and those who espouse rejection of any or all unions, except to the extent required by a valid provision in an agreement with an incumbent exclusive representative.<sup>24</sup>

In this respect, enforcement of valid agency rules in a discriminatory fashion may be held to be an unfair labor

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<sup>24</sup> See Federal Aviation Administration, New York Air Route Traffic Control Center, A/SLMR No. 184.

practice under the Statute and may also result in an election being set aside upon the filing of objections.

E. DISTRIBUTION OF LITERATURE

(1) Rights of Employees

The right of employees to distribute union literature, to solicit union members, to obtain union authorizations or to engage in other union campaign activities is not dependent upon the existence or non-existence of a petition for election (where there is no incumbent union) or a petition challenging the status of an incumbent labor organization, since these rights are guaranteed to employees under the law. (See the discussion of employee rights in Section II.A.) (See also The Federal Property Management Regulations, specifically 41 CFR 101-20.308.)

(2) Rights of Non-Employees

A different situation exists regarding rights of non-employees. Since an agency where there is no incumbent union need not permit non-employee representatives of any labor organization to use its facilities for purposes of campaigning or soliciting members, it may, if it permits use of facilities, impose reasonable restrictions applicable to all labor organizations similarly situated. Where no recognition exists, a restriction permitting one table or a designated number of tables for 30 days during any calendar year would not be unreasonable, provided it is applied equally to all labor organizations. Specific privileges concerning solicitation and campaign activities which flow to an incumbent exclusive representative from a negotiated agreement may not be extended to other labor organizations not having "equivalent status"; however, where a union obtains "equivalent status," it must be given the same privilege as the incumbent union regarding access to employees.

(3) Agency Rights

Under 5 U.S.C. 7116(e) an agency also may publicize the fact of a representational election and encourage employees to exercise their right to vote in the election and inform employees of the Government's policy relating to labor-management relations and representation. It should be noted that libelous, scurrilous or inflammatory literature should be removed when posted on the premises; the party posting the material should be instructed to remove the material and if it fails to do so, management should remove the material.<sup>25</sup> Agencies should, however, refrain from any involvement in policing or commenting on the contents of literature distributed by employees or by labor organizations in

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<sup>25</sup> Immigration and Naturalization Service and American Federation of Federal Employees and International Brotherhood of Police Officers, 9 FLRA No. 36.

an organizing or election campaign beyond correcting the record with respect to any false or misleading statement as provided for in 5 U.S.C. 7116 (e)(2).<sup>26</sup>

F. UNION ACCESS TO INFORMATION

(1) Right to Information

In accordance with 5 U.S.C. 7114(6)(4)(A) and (8), the certified union has a right to information solely within an employer's possession which is necessary and relevant to the union's representational responsibilities. However, the agency must make every reasonable effort to protect individual privacy by depersonalizing records whenever disclosure would constitute an unwarranted invasion of privacy.<sup>27</sup>

(2) Management Guidance

The agency is not required to provide information which constitutes "...guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining." [5 U.S.C. 7114(b)(4)(c)3 Similarly, the authorization in 5 U.S.C. 7132 for members of the Authority, the General Counsel, etc., to subpoena information does not extend to "...intra-management guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management." The decision to disclose will generally hinge on the type of information requested and the purpose to be served.

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<sup>26</sup> See Internal Revenue Service, North Atlantic Service Center, and National Treasury Employees Union, Local 69, 7 FLRA No. 92, for a discussion of standards applicable to literature attacking management.

<sup>27</sup> Department of the Navy, Portsmouth Naval Shipyard and Portsmouth Federal Employees Metal Trades Council, AFL-CIO, 4 FLRA No. 82.

APPENDIX A

STATUTORY DEFINITIONS

Significant terms are defined in 5 U.S.C. 7103.

"§ 7103. Definitions; application

"(a)" For the purpose of this chapter—

"(1) 'person' means an individual , labor organization, or agency;

"(2) 'employee' means individual—

"(A)" employed in an agency; or

"(B)" whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Authority;

but does not include--

"(i)" an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii)" a member of the uniformed services;

"(iii)" a supervisor or a management official;

"(iv)" an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency; or

"(v)" any person who participates in a strike in violation of section 7311 of this title;

"(3) 'agency' means an Executive agency (including a non appropriated fund instrumentality described in section 2105(c) of this title and the Veterans; Canteen Service, Veterans Administration), the Library of Congress, and the Government Printing Office, but does not include—

"(A) the General Accounting Office;

"(B) the Federal Bureau of Investigation;

"(C) the Central Intelligence Agency;

"(D) the National Security Agency;

"(E) the Tennessee Valley Authority;

"(F) the Federal Relations Authority;

or

"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

"(A) an organization which, by its constitution, by laws tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, martial status, or handicapping condition;

"(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

"(C) an organization sponsored by an agency; or

"(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

"(5) 'dues' means dues, fees, and assessments;

"(6) 'Authority' means the Federal Labor Relations Authority described in section 7104(a) of this title;

"(7) 'Panel' means the Federal Service Impasses Panel described in section 7119(c) of this title;

"(8) 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(9) 'grievance' means any complaint--

"(A) by any 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 any employee, labor organization, or agency concerning--

"(1) the effect or interpretation, or a claim of breach, of collective bargaining agreement; or

"(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet a reasonable times and to consult and bargain in good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession

"(13) 'confidential employee' means an employee who acts in confidential capacity with respect to an individual who

formulates or effectuates management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--

"(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

"(B) relating to the classification of any position; or

"(C) to the extent such matters are specifically provided for by Federal statute:

"(15) 'professional employee' means

"(A) an employee engaged in the performance of work--

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

"(ii) requiring the consistent exercise of discretion and judgement in its performance;

"(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

"(vi) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

"(B) an employee who has completed the course of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

"(16) 'exclusive representative' means any labor organization which--

"(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

"(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit--

"(i) on the basis of an election, or

"(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

"(17) 'firefighter' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighters apparatus and equipment; and

"(18) 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin

Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"(b)(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that-

"(A) the agency or subdivision has a primary function intelligence, counterintelligence, investigative. or national security work, and

"(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

"(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

APPENDIX B

§ 709. Technicians: employment, use, status

- (a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsection (b) of this section persons may be employed as technicians in-
  - (1) the administration and training of the National Guard; and
  - (2) the maintenance and repair of supplies issued to the National Guard or the armed forces.
- (b) A technician employed under subsection (a) shall, while so employed -
  - (1) be a member of the National Guard;
  - (2) hold the military grade specified by the Secretary concerned for that position; and
  - (3) wear the uniform appropriate for the member's grade and component of the armed forces while performing duties as a technician.
- (c) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title, to employ and administer the technicians authorized by this section.
- (d) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed therein is required under subsection (b) to be a member of the National Guard.
- (e) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned -
  - (1) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who is separated from the National Guard or ceases to hold the military grade specified for his position by the Secretary concerned shall be promptly separated from his technician employment by the adjutant general of the jurisdiction concerned;
  - (2) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who fails to meet the military security standards established by the Secretary concerned for a member of a reserve component of the armed force under his jurisdiction may be separated from his employment as a technician and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;
  - (3) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;
  - (4) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;
  - (5) a right of appeal which may exist with respect to clause

- ( ) a right of appeal which may exist with respect to clause general of the jurisdiction concerned; and
- (6) a technician shall be notified in writing of the termination of his employment as a technician and, unless the technician is serving under a temporary appointment, is serving in a trial or probationary period, or has voluntarily ceased to be a member of the National Guard when such membership is a condition of employment, such notification shall be given at least 30 days before the termination date of such employment.
- (f) Sections 2108, 3502, 7511, and 7512 of title 5 do not apply to any person employed under this section.
- (g)
  - (1) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, in the case of technicians assigned to perform operational duties at air defense sites -
    - (A) prescribe the hours of duties;
    - (B) fix the rates of basic compensation; and
    - (C) fix the rates of additional compensation; to reflect unusual tours of duty, irregular additional duty, and work on days that are ordinarily nonworkdays. Additional compensation under this subsection may be fixed on an annual basis and is determined as an appropriate percentage, not in excess of 12 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 of the General Schedule under section 5332 of title 5.
  - (2) Notwithstanding sections 5544 (a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, for technicians other than those described in paragraph (1), prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.
- (h) Repealed. Pub. L. 103-160, div. A, title V, Sec. 524(d), Nov. 30, 1993, 107 Stat. 1657.)
- (i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.

## Chapter 71

### Labor-Management Relations

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- 7104. Federal Labor Relations Authority
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- 7111. Exclusive recognition of labor organizations.
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- 7135. Continuation of existing laws, recognitions, agreements, and procedures.

## Subchapter I: General Provisions

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### § 7101. FINDINGS AND PURPOSE

- (a) The Congress finds that -
- (1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them-
- (A) safeguards the public interest.
- (B) contributes to the effective conduct of public business, and
- (C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment. and
- (2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government. Therefore, labor organizations and collective bargaining in the civil service are in the public interest.
- (b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

### § 7102. EMPLOYEES' RIGHTS

- Each employee shall have 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. Except as otherwise provided under this chapter, 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.

### § 7103. DEFINITIONS; APPLICATION

- (a) For the purpose of this chapter -
- (1) "person" means an individual, labor organization, or agency.
- (2) "employee" means an individual -
- (A) employed in an agency; or
- (B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority; but does not include-
- (i) an alien or non-citizen of the United States who occupies a position outside the United States;
- (ii) a member of the uniformed services;
- (iii) a supervisor or a management official;
- (iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce, or
- (v) any person who participates in a strike in violation of section 7311 of this title:
- (3) "agency" means an Executive agency (including a non appropriated fund instrumentality described in section 2105 (c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office. but does not include-
- (A) the General Accounting Office;
- (B) the Federal Bureau of Investigation;
- (C) the Central Intelligence Agency;
- (D) the National Security Agency;
- (E) the Tennessee Valley Authority;
- (F) the Federal Labor Relations Authority; or
- (G) the Federal Service Impasses Panel;
- (4) 'labor organization' means an organization composed in whole or in part of employees. in which employees participate and pay dues. and which has as a purpose the dealing with an agency concerning grievances and conditions of employment. but does not include-
- (A) in organization which. by its constitution. bylaws, tacit agreement among its members. or otherwise, denies membership because of race, color.

creed, national origin, sex, age, preferential or non-preferential civil service status, political affiliation, marital status, or handicapping condition:

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency; or

(D) an organization which participates in the conduct of a strike against the Government of any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(5) "dues" means dues, fees, and assessments,

(6) "Authority" means the Federal Labor Relations Authority described in section 7104(a) of this title;

(7) "Panel" means the Federal Service Impasses Panel described in section 7119(c) of this title;

(8) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

(9) "grievance" means any complaint-

(A) by any 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 any employee, labor organization, or agency concerning -

(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement, or

(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

(10) "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.

(11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.

(12) "collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document

incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

(13) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations-

(14) "conditions" of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--

(A) relating to political activities prohibited under subchapter III or chapter 73 of this title;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute.

(15) "professional employee" means-

(A) an employee engaged in the performance of work-

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities)-.

(ii) requiring the consistent exercise of discretion and judgment in its performance-

(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time, or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(I) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) "exclusive representative" means any labor organization which-

(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive

representative of employees in an appropriate unit-

(i) on the basis of an election, or

(ii) on any basis other than an election, continues to be so recognized in accordance with the provisions of this chapter;

(17) "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use or firefighting apparatus and equipment; and

(18) " United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b) (1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that-

(A) the agency or subdivision has as a primary, function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(C) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

#### **§ 7104. FEDERAL LABOR RELATIONS AUTHORITY**

(a) The Federal Labor Relations Authority is composed of three members, not more than two of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only of inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

(c) (1) One of the original members of the Authority, shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of -

(A) the date on which the member's successor takes office, or

(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress, which shall include information as to the cases it has heard and the decisions it has rendered.

(f) (1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position of the Government of the United States except as provided by law.

(2) The General Counsel may-

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

#### **§ 7105. POWERS AND DUTIES OF THE AUTHORITY**

(a) (1) The authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provide, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority-

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organization;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117 (b) of this title;

(E) resolves issues relating to the duty to bargain in good faith under section 7117 (c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117 (d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e) (1) The Authority may delegate to any regional director its authority under this chapter-

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later-

(1) the date of the action; or

(2) the date of the filing of any application under this subsection for review of the action;  
the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may-

(1) hold hearings;

(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may, request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office if Personnel Management in connection with any matter before the Authority.

### § 7106. MANAGEMENT RIGHTS

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency-

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws-

(A) 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;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from-

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating-

(1) at the election of the agency, on 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;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

## Subchapter II: Rights and Duties of Agencies and Labor Organizations

### § 7111. EXCLUSIVE RECOGNITION OF LABOR ORGANIZATIONS

(a) An agency shall accord exclusive recognition to a labor organization if the organization has 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.

(b) If a petition is filed with the Authority-

(1) by any person alleging-

(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which-

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit-, or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose-

(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be

conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization-

(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles-

(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition,

(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless-

(A) the collective bargaining agreement has been in effect for more than 3 years. or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement, or

(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

### § 7112. DETERMINATION OF APPROPRIATE UNITS FOR LABOR ORGANIZATION REPRESENTATION

(a) (1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organization, nor shall it unit be determined to be appropriate if it includes-

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counter-intelligence, investigative, or security work which directly affects national security; or

(7) any employee 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.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not file represented by a labor organization-

(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

### § 7113. NATIONAL CONSULTATION RIGHTS

(a) (1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b) (1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall-

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes. (2) If any views or recommendations are presented

under paragraph (1) of this subsection to an agency by any labor organization-

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented, and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(C) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

### § 7114. REPRESENTATION RIGHTS AND DUTIES

(a) (1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an Appropriate unit in an agency shall be given the opportunity to be represented at-

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives, concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if-

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2) (B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from-

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation-

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data-

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c) (1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the proceedings of the controlling agreement or, if none, under regulations prescribed by the agency.

#### **§ 7115. ALLOTMENTS TO REPRESENTATIVES**

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when-

(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c) (1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor

Organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2) (A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

#### **§ 7116. UNFAIR LABOR PRACTICES**

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency-

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to 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;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to otherwise fail or refuse to comply with any provisions of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization-

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age,

preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter.

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter.

(7) (A) 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 an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere any agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure-

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters where, under section 7121 (e) and (f) of this title, an employer has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which-

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election..

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat or reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

## **§ 7117. DUTY TO BARGAIN IN GOOD FAITH; COMPELLING NEED; DUTY TO CONSULT**

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a) (3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if-

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

(B) the Authority determines that a compelling need for a rule or regulation does not exist.

(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by-

(A) filing a petition with the Authority; and

(B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall-

(A) file with the Authority a statement-

(i) withdrawing the allegation; or

(ii) setting forth in full its reasons supporting the allegation; and

(B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

(d)(1) A labor organization, which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall-

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization,

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented, and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

## § 7118. PREVENTION OF UNFAIR LABOR PRACTICES

(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails

to state in unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice-

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the Authority and designated for such purpose), and

(C) of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of-

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order-

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring, reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5196 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

#### **§ 7119. NEGOTIATION IMPASSES; FEDERAL SERVICE IMPASSES PANEL**

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or Any other third party mediation, fail to resolve a negotiation impasse-

(1) either party may request like Federal Service Impasse Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years.

Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either-

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including fact-finding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may-

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

#### **§ 7120. STANDARDS OF CONDUCT-1- FOR LABOR ORGANIZATIONS**

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for-

(1) the maintenance of democratic procedures once practices including provision for periodic elections to be conducted subject to recognize safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that-

(1) the organization has been suspended or expelled from, or is subject to other sanctions, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in, a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, walk stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation-

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

## Subchapter III: Grievances, Appeals and Review

### § 7121. GRIEVANCE PROCEDURES

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d) and (e) of this section, the procedures shall be the exclusive procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall-

- (1) be fair and simple,
- (2) provide for expeditious processing, and
- (3) include procedures that-

(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(B) assure such an employee the right to present a grievance in the employee's own behalf, and assure exclusive representative the right to be present during the grievance proceeding; and

(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning-

- (1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);
- (2) retirement, life insurance, or health insurance;
- (3) a suspension or removal under section 7532 of this title;
- (4) any examination, certification, or appointment;
- (5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2303(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under section, 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

### § 7122. EXCEPTIONS TO ARBITRAL AWARDS

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). It upon review the Authority finds that the award is deficient-

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations; the authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations,

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

### § 7123. JUDICIAL REVIEW; ENFORCEMENT

(a) Any person aggrieved by any final order of the Authority other than an order under-

(1) section 7122 of this title involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeal for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under section (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ

of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions of if the Authority fails to establish probable cause that an unfair labor practice is being committed.

## Subchapter IV: Administrative and Other Provisions

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### § 7131. OFFICIAL TIME

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a nonduty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section-

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative, shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

### § 7132. SUBPOENAS

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may-

(1) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same, fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

### § 7133. COMPILATION AND PUBLICATION OF DATA

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of section 552 and 552a of this title.

### § 7134. REGULATIONS

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

### § 7135. CONTINUATION OF EXISTING LAWS, RECOGNITIONS, AGREEMENTS, AND PROCEDURES

(a) Nothing contained in this chapter shall preclude-

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787 and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.