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Collective Bargaining Manual

Prepared by the AFGE Office of Labor Management Relations
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This printing of the manual reflects changes through 7/12/02. Check the OLMR portion of the AFGE website to ensure that this is the most recent version.

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I INTRODUCTION

The premise of this manual is that contract negotiations in the federal sector can be conducted far more effectively and efficiently than they typically have been for the last several decades. We can and must reduce management's power to require the waste of valuable time at the bargaining table and to stretch out bargaining for years. The tactics we suggest for this should also help the union concentrate on its members' own priorities, and thus result in far better substantive contract terms.

Consult "AFGE Strategic Plan"

This manual shows how to bargain effectively in the face of management's unfair advantages.

Unions—private sector as well as federal sector—rely on a variety of tools to serve their members. These can be summarized as legislation, litigation, arbitration, negotiation, participation, and publication. It is critical to keep in mind that different problems can be best attacked by different methods; there is a difference between saying that a particular issue is outside the scope of bargaining and saying that the union is unable to successfully deal with it.

People join unions in the federal sector for the same reasons that people join unions in the private sector: they want to participate in setting their own working conditions, including pay and job security.

As is true in the private sector as well, some of these objectives are sought through direct collective bargaining with the employer, while others are sought through changes in laws and government regulations. For example, safe working conditions are an extremely high priority for industrial unions; rather than rely simply on their bargaining power with each employer, they have successfully convinced Congress to pass the Occupational Health and Safety Act, and they then aggressively enforce the law. Understand, though, that none of these legislative successes occurs without heavy union membership participation.

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In the federal sector, the law controls more of the working conditions, pay, and job security issues than is the case in the private sector, but the difference is one of degree. The union objectives and union tactics are basically the same in both the federal and private sectors.

The purpose of this manual is to guide locals and bargaining councils in obtaining the best contract provisions, with the greatest amount of member participation, with the least expenditure of time and with the greatest side benefits, while recognizing that some problems can be better dealt with in other forums.

Bargaining effectiveness can be measured against four criteria:

> How many of the high priority problems (as defined by the employees) were successfully addressed?
>
> How many days (or weeks, or months, or years) elapsed between beginning to bargain and completing the bargaining?
>
> How many days were actually spent at the bargaining table or in closely related activities such as mediation or impasse resolution?
>
> To what extent did bargaining serve as a vehicle of employee participation in establishing working conditions?

Thus, the challenge to the union at all levels is to carry out a bargaining strategy that succeeds in achieving the highest priorities of the employees, as quickly as possible and with as little wasted effort as necessary, and in a way that the employees actually participate in the process.

These factors all work together. Negotiations that focus on the highest priority problems are move likely to be successfully concluded before negotiations that address 150 minor issues. The very decision to determine employee priorities begins the process of employee involvement. The

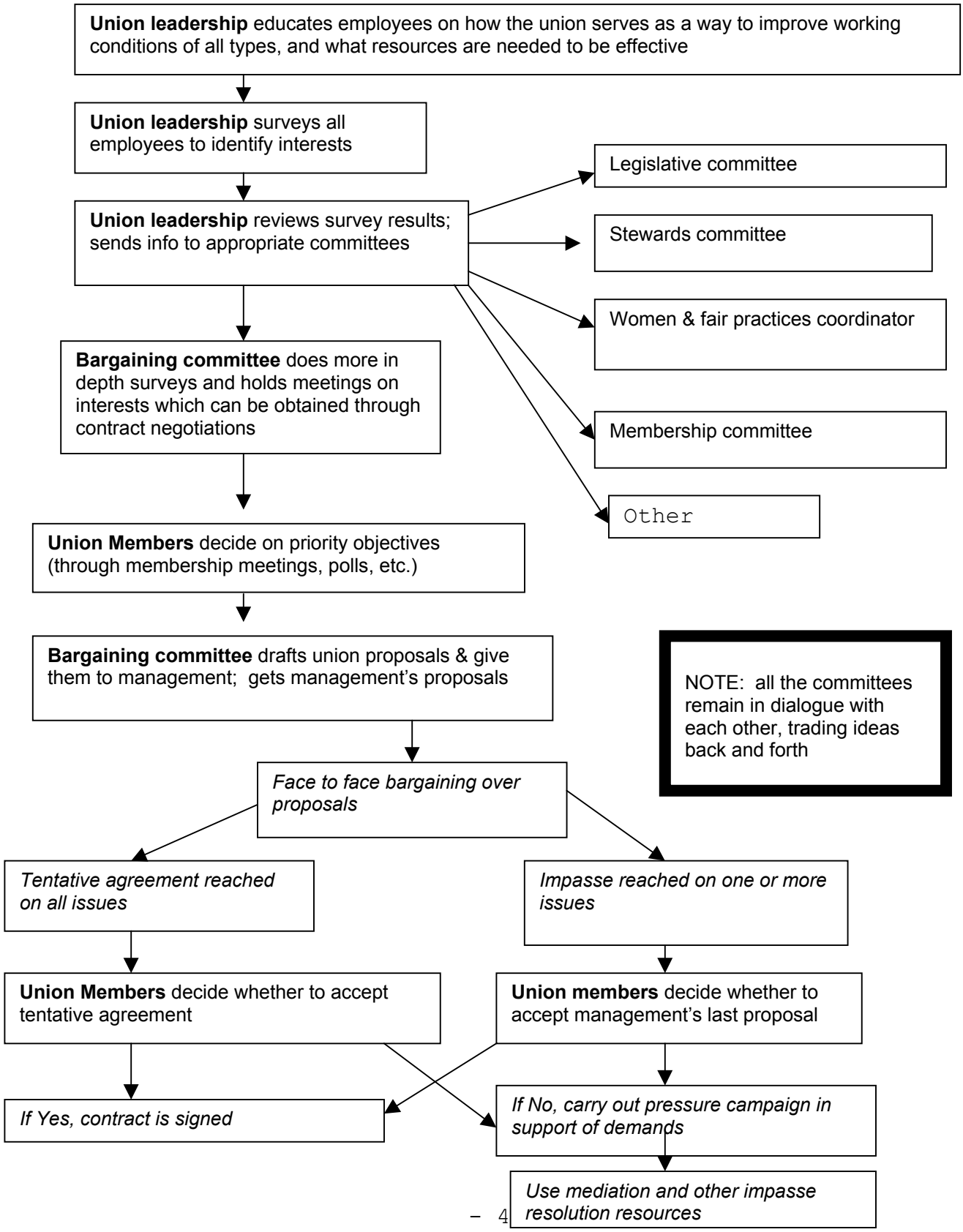
more employee involvement, the greater the pressure on management to agree to the union's demands. And so forth.

The most effective strategies will contain the following elements:

> Bargaining is focused on a relatively small number of issues, those which the employees themselves have determined to be their highest priorities.
>
> Bargaining, once begun, is continuous until it is concluded. It goes for at least eight hours a day, five days a week, four and a half weeks a month.
>
> There are effective disincentives to management refusing to bargain on the grounds of non-negotiability.
>
> Management's refusal to bargain in good faith speeds up, rather than delays, completion of bargaining.
>
> The union achieves its bargaining objectives, whether through agreement with management or an order by the Federal Service Impasses Panel.
>
> The union negotiators have fun.

The practice of labor-management relations is a skill, not a science. Where possible, this manual suggests actions and tactics that are most likely to bring you success but piecing together the various concepts that make up an entire real-world situation necessarily engages your personal knowledge, ingenuity, and experience.

The chart on the following page outlines the major steps towards successful contract negotiations. Each step will be discussed in detail at the appropriate place in the manual.



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A. HOW DOES THE UNION GET WHAT ITS MEMBERS WANT?

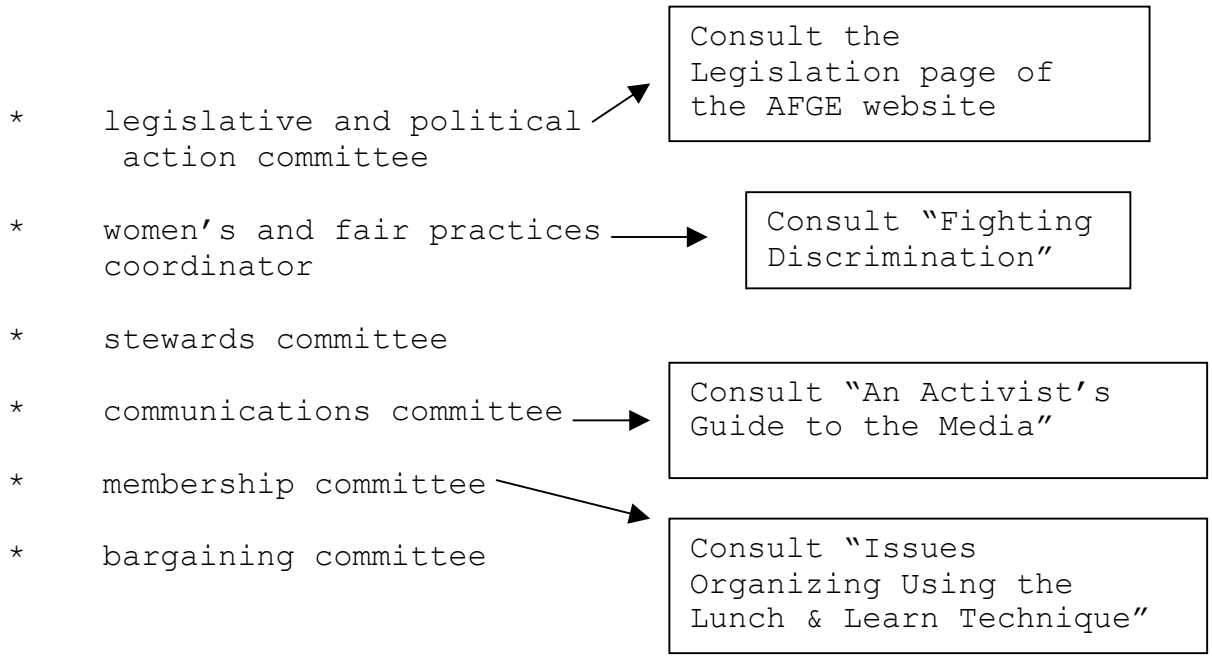
The union gets what its members want by finding out what their priorities are, and then using all the tools at its disposal to obtain those priorities. These include legislation, litigation, arbitration, and negotiations.

B. FINDING OUT WHAT THE MEMBERS WANT

It need hardly be said that the only way to get the members what they want is first to ask them. The techniques for doing this are discussed below.

C. TOOLS TO ACHIEVE THE MEMBERS' OBJECTIVES

Once the employees have identified the problems or opportunities that concern them most, the union should allocate responsibilities among the appropriate committees of the local or council:



Many of the objectives of the union must be sought in ways other than bargaining. These alternatives include legislation, regulation, litigation, arbitration, participation, and publication.

For example, employees may encounter two different types of problems on a matter completely controlled by existing government-wide regulations. One problem might be that management IS NOT complying with the regulation. That should be addressed through litigation, arbitration, or publicizing the violations. It is generally a waste of time to try to get management to agree in a contract to do exactly what they are already required to do by higher authority. If management does not bother complying with regulations, they probably won't comply with an identical contract provision.

A different problem might be that management IS complying with an existing regulation, but the employees just don't like the regulation. This is not something that can be remedied at the bargaining table, because all contracts must be consistent with government-wide regulations. Instead, the remedy must be for the union to seek a change in those regulations.

Similarly with laws. The union has, or must have, the capacity to both enforce laws and to have them changed.

In addition, there may be issues which are adequately addressed by the current language of your contract. The problem is simply a failure to enforce those provisions. Nothing can be accomplished by further bargaining over the subject. Instead, we have to develop effective stewards and officers who can successfully enforce the contract. Indeed, any contract is worthless unless the union has the resources and the will to enforce it.

The union cannot bargain effectively unless it is active and competent in legislative and political action, contract enforcement, and organizing.

D. BARGAINING IN GOOD FAITH

The bargaining tactics we discuss depend on your ability to decide when management is bargaining in good faith and when it is not. A review of the applicable law may be useful.

Under the law governing bargaining in the federal sector, the union is entitled to negotiate collective bargaining agreements covering the employees it represents; stated otherwise, management is obliged to bargain with the union concerning the employees the union represents. The law itself further defines what that means:

> "collective bargaining" means the performance of the mutual obligation of the representatives of an agency and the [union] 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 . . . 5 U.S.C. § 7103(a)(12).

Indeed, the law goes beyond that, and identifies specific elements of what bargaining in good faith is:

> The duty of an agency and an exclusive representative to negotiate in good faith . . . 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 . . . 5 U.S.C. § 7114(b)(3).

Good faith requires that the negotiators act in a way that reflects a sincere intent to reach a mutually satisfactory agreement. Subjective good faith is absolutely necessary, but it is not sufficient. That is, the negotiators must not only want to reach agreement, but their actions must be consistent with that intent. And, includes, of course, being prepared and avoiding delays.

As a practical matter, the test is this: is management attempting to develop a contract provision which meets each of the interests that the union's original proposal was

designed to achieve? Of course, this is only possible with the interests that the union articulated, not interests that it kept secret. If management is bargaining in good faith in this sense, it will openly articulate the interests that it seeks to serve at the same time. With both parties open about their interests, and both parties willing to find a solution that meets all the interests of both of them, it will almost always be possible to find a mutually acceptable solution. That is what good faith bargaining is.

Good faith bargaining takes at least a little time, plus a lot of effort. You really have to listen to the other side, and really need to analyze alternatives to reaching your objectives. But, in fact, this time is measured in minutes and hours, or at worst, days, and has results that are meeting your objectives. It is time and effort well spent.

However, the main purpose of this manual is to show how to bargain successfully, in the minimal amount of time, even when management is not bargaining in good faith.

II STAGES OF CONTRACT BARGAINING

A. DEVELOPING AND ADOPTING THE BARGAINING PLAN

The local leadership should develop and adopt a comprehensive bargaining plan at least six months before any bargaining is expected to begin. A national bargaining council should begin much earlier than that, given the complexities of communication, travel, and workforce diversity.

Normally, the first step is appointing a bargaining committee. The bargaining committee, in consultation with the local or council leadership, then needs to identify who is to carry out the following functions and what the applicable deadlines are:

- Determine when the notice to reopen the contract must be submitted
- Consult with the national AFGE on strategy and resources, including the use of AFGE staff on the bargaining committee (locals will usually work with AFGE District Offices, while national bargaining councils will usually work with the AFGE Office of Labor Management Relations)
- Obtaining training
- Carry out a series of surveys of the bargaining unit
- Draft contract proposals, including consultation with the appropriate national AFGE office
- Draft ground-rule proposals and negotiate them with management

B. APPOINTING AND TRAINING THE UNION BARGAINING COMMITTEE

Sometimes your local or council constitution will specify who is on the bargaining team and, sometimes, who serves as the chief negotiator; in other cases, the constitution specifies how the team will be appointed. Otherwise, the team should be appointed by the executive board. The leadership should keep in mind that throughout negotiations the union is going to have to continue to do routine representational work. If you put the entire leadership on the negotiating team, no one else will be available to make important day to day decisions and perform other essential work.

It is not essential to have an odd number of members, because if the team is closely split on an issue, it is worthwhile to work more towards a consensus. The actual number depends on the reality of the workplace. A multi-local council will need a larger bargaining committee than would a single, small local representing a homogeneous worksite. In either event, the makeup of the team should reflect the employees in the bargaining unit.

Consult "Equal Opportunity and Diversity Policy of AFGE"

There are no established qualification standards for union bargaining representatives. The most important factors are common sense and actual knowledge of the workplace, including what the problems are that have led to grievances. You may wish to have particular subject matter experts on the team. This could be, for a example, a health and safety expert, someone knowledgeable about EEO issues, or a member with expertise about how the agency functions (including its' mission, budget, and structure). While the actual number of negotiators who sit at the table will be agreed upon by the parties, the union can have additional people on the team who help with research and writing proposals.

Ultimately, it is good to have at least one person who is comfortable with drafting contract language. In this connection, however, remember that the goal of contract language is to clearly reflect the actual agreement of the

parties. If any member of the union negotiating team cannot understand what a proposed provision means, then that draft is inadequate and should be revised.

Of course, few people are naturally born union contract negotiators. Part of your preparation for bargaining is obtaining training for the members of the negotiating team. Thus, initially, the question is not whether a person is already able to negotiate effectively, but whether he or she has the dedication and ability to learn those skills.

The more diverse the workplace, the larger and more diverse the union team should be. If the bargaining unit covers both professionals and non-professionals, at least one member from each group should be on the team. But even with the general category "non-professionals," there are often widely different jobs with widely different problems and interests. Similarly, if there are both wage-grade and GS employees in the unit, both groups should be represented on the team.

C. Educating and surveying the members

Although the members must ultimately make the critical decisions, they depend on the leadership for their information. It is not enough to ask employees what improvements they want in their working conditions and benefits, unless you first give them some ideas of what kind of things are available. Thus, if employees are unaware that it is possible to negotiate assistance for student-loan repayment, they are hardly going to list this as something they would like the union to seek.

This problem is particularly acute when it comes to union institutional needs. The fear that some local leaders have that the members will not support fights for sufficient official time and official facilities may be rooted in a failure to explain the need for these benefits. For example, the members need to know that without official time, they themselves will not be able to meet with union stewards over grievances during regular workhours, and that their representatives will not have the time to adequately prepare to represent them. Similarly, without a secure

union office, there will be no private place to discuss problems with the union. Such possible subjects should be addressed in newsletters and meetings for several months before any surveys are taken.

1. Surveys

Since the only reason we bargain is to make things better for the employees we represent, those employees must participate at every stage in the process. Collective bargaining is not a matter of the union geniuses sitting down with the management geniuses and deciding what is best for the employees.

The first step should be to survey all the employees to identify their problems and possible solutions. In most cases, the survey should go to potential members as well as actual members. Particularly where membership is low, distribution and collection of the survey form should be assigned to stewards and other members, not just left to the officers. This makes the union very visible, and provides a perfect opportunity for union activists to discuss problems with potential members and show how problems could be better solved if those people joined the union.

A sample survey form is attached. Modify it to suit your situation.

One week after the survey is distributed, remind people to turn it in. Use leaflets, desk drops, e-mails, bulletin board postings—whatever works at your facility.

As emphasized above, there are many employee demands which cannot be addressed through contract negotiations. The union leadership must refer these issues to their respective committees: legislation, political action, EEO, stewards, membership, and so forth. These committees will work aggressively on these issues at the same time the bargaining committee works on the issues referred to it.

2. Experience under the present contract and regulations

What are the problems that the employees have been bringing to the union over the last three years? Where have we failed because the current contract does not adequately address the issue?

These questions are answered by reviewing the grievance and arbitration record under the existing contract.

The union needs to think about how the contract will be enforced in the future. All the Bargaining Team's efforts may be short-changed unless, during the bargaining preparation, the Team asks itself: "What are we finding out about how our Union operates that we didn't realize, and do we need to do things differently to keep improving our contract administration and employee representation in all arenas?"

It is critical that someone review the various regulations relevant to particular issues, because it may be that the solution already exists in the form of enforcement rather than negotiations.

3. Membership endorsement

Although the surveys will probably go to all employees, acting on the survey results must be limited to the dues-paying members.

Remember, the sole purpose of the union is to give employees the opportunity to participate in setting their own working conditions. There is no possible free ride to participation. If an employee wants to participate, he or she joins the union; if an employee does not join the union, he or she cannot participate in determining what the union's bargaining objectives are.

The survey results may show employee interest in anywhere from a few to a lot of problems or opportunities. Some areas may be of interest to only one or two employees;

others may be of interest to nearly everyone; still others will fall somewhere in the middle.

The membership, however, is free to make whatever judgement it wants. It is in no way bound by the opinions expressed by non-members, which would be reflected in the survey results.

The leadership should probably suggest that the members set four or five priority objectives, together with whatever union institutional changes are needed.

4. Drafting proposals

Your basic objective in drafting proposals is simply to say what you mean as clearly as possible. If there is anyone on the team who does not understand a draft proposal, it must re-written.

When drafting proposals, understand possible scope of bargaining problems, for several reasons. First, it allows you to obtain a commitment from the national AFGE to handle the brief-writing in support of any negotiability appeals you file. Second, it allows you to avoid wholly unnecessary fights over negotiability.

5. Timely request to bargain

Most existing contracts require that requests to re-negotiate be filed with the other party during a specific period before the contract expiration date. Usually that is the period 90 to 120 days prior to expiration.

A failure to make a timely notice generally waives your right to bargain changes in the contract until, depending on the contract, another year or two or three pass.

D. THREE PRELIMINARIES

Before you start bargaining, there are three steps that you should routinely take.

1. Notify FMCS

At least 30 days prior to negotiations, the Local or Council must submit FMCS Form F-53 to the appropriate regional office of the Federal Mediation and Conciliation Service. This is required by law, and provides the FMCS some ability to schedule its workload. The form is available at www.fmcs.gov.

Requesting the services of a mediator when needed is discussed below.

2. Authority of management negotiators: levels of bargaining and levels of recognition

The party with whom you are bargaining is the employing agency.

If the employer is an independent agency, such as the EEOC or the National Transportation Safety Board, that obviously is the agency for this purpose. If the employees you represent are within a chain of command reaching to a cabinet-level department, that is the employer.

For example, the employer for all purposes of bargaining anywhere within the Department of Defense is the Department of Defense. It is not the Department of the Army or Air Force, nor DFAS nor DeCA. The employer is not a major command, a civilian personnel office, a military base or depot. The employer everywhere within DOD is DOD.

This is true for all the cabinet level departments. The agency for Census Bureau employees is the Department of Commerce; the agency for the Vector Bone Diseases of the Centers for Disease Control is the Department of Health and Human Services; the agency for the Western Region Research Center of the Agricultural Research Service is the Department of Agriculture; and so on.

One sometimes hears the phrase, "bargaining at the level of recognition." Regardless of what that is supposed to mean, the law expressly requires the Department of Defense to authorize all management negotiators within the department to bargain on behalf of the department.

It might be useful to see in advance that the necessary delegations of authority have been made. We suggest the following letter be sent to local management a month or two before negotiations are to begin:

Dear _____:

Pursuant to 5 U.S.C. 7114 and the Freedom of Information Act, please provide me copies of all documents:

a. Delegating authority from the head of the agency to review contracts under 5 U.S.C. 7114(c);

b. Delegating agency authority to the management chief negotiator to bargain with this Local.

On the other hand, there is no real risk going ahead with bargaining even though the management chief negotiator does not have a written delegation of authority. Certainly, we do not want management to be able to unilaterally delay the beginning of negotiations simply by ignoring this document request.

3. Reserve right of membership approval

We will discuss later the pluses and minuses of subjecting contracts to ratification by the union members. The critical point here is that if you are going to use ratification, you must inform management of this at the outset. For example:

> Dear Management:
>
> This is to inform you that any contract negotiated by this bargaining team will be subject to ratification by the union membership.
>
> Sincerely,

E. GROUND RULES

In most cases it is a good idea to negotiate a memorandum that sets out the ground rules for the substantive negotiations. A lot depends on your overall relationship with management. There have been cases where these ground rules negotiations themselves have wasted immense amounts of time and effort.

Often a contract will contain the ground rules both for mid-term bargaining and for bargaining to replace the

contract. The key thing is that ground rules are for the purpose of expediting negotiations, not slowing them down.

It is, therefore, far better to allow the beginning of substantive negotiations to be delayed while the FSIP handles your impasse over ground-rules than to agree to management ground rule proposals which will delay completion of negotiations for years.

Not everyone uses written groundrules. There are times when the union and management genuinely trust each other, and both know the other will bargain in good faith. Still, even here, to avoid misunderstandings, it makes sense to at least write a memo to the other side, beginning: "This is to confirm that . . . " and filling in the details of the understanding.

1. Bargaining schedule

You do not have to obtain management's agreement to bargain. That obligation is imposed by law and includes the obligation to bargain at reasonable times and places.

Begin with a memo to management, proposing that the parties meet at a specified time, date and place, and requesting alternatives if those are not acceptable. If management responds in good faith, the parties will quickly find a mutually acceptable time and place.

If management either ignores your request, or if it suggests an absurd alternative, show up at the time and place you suggested and, if management fails to appear, file an unfair labor practice charge. Management's conduct is, by definition, an illegal failure to meet at reasonable times and places. Chapter X of this manual discusses filing unfair labor practice charges.

Normally, a ground rules agreement will not only set out the schedule for actually bargaining, but will also provide for exchanging proposals before the first meeting.

The bargaining schedule should ordinarily be all day, every work day, until the bargaining is completed. The parties may agree on some days to work late, in order to keep the momentum going. You need to be fully sensitive to the fact that some bargaining committee members may have other responsibilities which keep them from working late, however.

If the overall bargaining strategy contained in this manual is being followed, there is not need to set a deadline for completing negotiations. Deadlines are designed to discourage both parties from wasting time. One point of this manual's strategy is that we can unilaterally act to keep time from being wasted.

2. Number of negotiators; official time

The union determines unilaterally the number of members on its own negotiating team. We have to bargain with management over how many of the union bargaining team members will be on official time (keeping in mind that we are automatically entitled to at least as many members on official time as there are members of the management negotiating team.)

What if management says that it only needs one or two people? Even though management is probably bluffing, there is no need to waste a great deal of time in discussions. Inform management of the benefits of diversity, and if that doesn't work, declare the issue to be at impasse. The Federal Service Impasses Panel will then decide how many members of the union negotiating team will be on official time.

In addition to official time for the bargaining team members during actual negotiations, it may be necessary to negotiate preparation time (including time for meetings with employees), shift changes or differentials, and travel and per diem.

3. Identity of the negotiators

By and large, each side has total control over who will serve on its negotiating team. Neither side can refuse to bargain just because it doesn't like a particular person on the other side. Two obvious exceptions are that the union team cannot have any managers, and the management team cannot have any member of the bargaining unit (whether or not that employee is a dues-paying member of the union).

4. Meeting rooms; equipment

It is stupid to try to bargain in a room that is small, ill-lit, ill-ventilated, or either too hot or too cold. It is equally stupid to try to bargain when the union does not have an adequate place to caucus, or where normal equipment is unavailable.

You might propose ground-rules to cover these matters, but don't worry about them. If management in fact fails to provide adequate facilities, it is obvious that it is not going to be bargaining in good faith anyway. As discussed below, management's failure to bargain in good faith will simply end negotiations quickly and place the dispute before the Federal Service Impasses Panel.

5. Publicity

Do not agree to restrictions on publicity. One of the greatest factors handicapping negotiations is management's ability to be obnoxious at the bargaining table, but appear reasonable to the people in the workplace.

We must reserve (and exercise) the right to accurately report on management's conduct, behavior and positions. This should not be discussed in the ground-rules, however.

6. Definition of impasse

As will be discussed below, "impasse" is a term of art. It does not need to be separately defined in any agreement of

the parties. Any such definition will only serve to delay completion of bargaining.

For example, if the groundrules say that an impasse occurs only after the parties have discussed the proposals three times, a couple of problems arise. What counts as "discussion" for the purposes of the groundrules bears no relationship to what the Federal Service Impasses Panel considers to be an impasse. What is likely to happen on a controversial topic is that there will be three meaningless chats, spread over a couple of weeks, and then a refusal by the FSIP to believe there is a genuine impasse.

7. Breaks and caucuses

As a practical matter, there is no way to stop a party from taking a break or a caucus at any time. If management says, "Your new proposal looks good, but we need a half hour in private to go over it," you're not going to object. Thus, there is absolutely no reason to define, in writing and in advance, when breaks will occur and when caucuses may be taken.

8. Handling negotiability disputes

Some locals have been tricked into accepting a ground rule on handling negotiability disputes that results in a waiver of the union's control of the timing of filing negotiability appeals. In some cases, the entire right to challenge negotiability claims has been forfeited because the local did not know that the ground rule in effect created deadlines. You should absolutely refuse a groundrule that says that management will put negotiability allegations in writing, or when they will do so. The FLRA construes these types of provisions as a waiver of the union's control over when to deal with negotiability issues.

At the same time, it might be useful to have an agreement in advance that if there are any pending negotiability cases at the point when everything else has been agreed to, the contract will be signed subject to reopening if the FLRA rules in our favor on negotiability. Of course, depending on the situation, you may want the contract

completion to not occur until the negotiability dispute subjects have been resolved.

If you have any questions in this area, talk to your National Representative, who will bring the issue to OLMR for additional guidance, if necessary.

F. FACE TO FACE BARGAINING; IMPASSE

The union has two main objectives at the bargaining table: if management is bargaining in good faith, we try to reach agreements that achieve all our objectives while being consistent with management's interests; if management is not bargaining in good faith, we obtain our objectives without spending too much time at the bargaining table.

1. Identify the objective of each proposal.

From the outset, state plainly why you want each proposal. Usually that can be explained in terms of the objectives adopted by the membership. Often, it helps to list all the interests that the proposal seeks to serve.

Invite management to identify any other interests relevant to the subject. If they identify those interests, it becomes relatively easy to jointly find a solution that satisfies everyone. If they refuse to identify those interests, make a careful note of what exactly they say.

As we shall see, we should easily win the impasse resolution process if our proposal meets all the interests both parties have articulated. If management insists it has no interests, so much the better.

"But", management will whine, "we are not doing interest-based bargaining."

We don't care about labels. If management tells us what its interests are (or its objectives, or its reasons, or whatever), bargaining is likely to result in a mutually satisfactory agreement. If they don't have any interests that they are willing to identify, it will be easier for us to win when the impasse is litigated.

In short, they don't have to tell us their interests; but they can't stop us from telling them ours, and continuing to invite them to search for mutually satisfactory solutions.

2. Bargain to agreement or impasse

One factor that tends to unnecessarily stretch out contract negotiations is the belief that bargaining does not reach impasse until some huge number of hours have been wasted in unproductive discussions. That is not true.

By definition, negotiations have reached an impasse when they have ceased movement, no matter how soon or how late in the process that occurs. Also, by definition, an impasse can be unilaterally broken at any time, by either party making a concession that opens the way to possible agreement.

> Of course, you determine the existence of an impasse based on your own perception. The Federal Service Impasses Panel is not bound by your perception, so the mere fact that you say the dispute is at impasse does not mean the FSIP will take the case.

In the usual situation, the union has made a proposal. After we have answered all of management's questions, and management has caucused and consulted as much as they want, only four options exist:

	Management response	Union response to response
1	yes	There is an agreement; nothing more needs to be said.
2	A counterproposal that seeks to achieve the union's interests as well as management's	This is bargaining in good faith. If both sides continue to search for terms that will meet the interests of both, an agreement will be reached fairly soon.
3	No—stated in a few different ways:	
	Just plain no	Management is not bargaining in good faith, and the negotiations are at impasse. Say this, and move on.
	Frivolous or insulting counterproposal; one that does not even try to achieve the union's interests	Just say no; that means the bargaining is at impasse. Say this, and move on.
	Claim that the union proposal is not even negotiable	This is an admission that management isn't even trying to bargain. Tell management we are moving on to the next subject.

To repeat: If we have made a proposal, and management neither agrees, nor offers a counter-proposal, nor formally refuses to bargain, the parties are at impasse over that proposal. It will rarely be of any use for us to try to discuss the issue further: that leads to bargaining against ourselves, which is never a good idea. We should note that the issue is at impasse, and move on to another subject.

Remember, though, that just as an impasse automatically comes into existence when there is no progress, any progress by definition destroys the impasse. There is nothing to bar management from making a counterproposal tomorrow on a subject on which it had nothing useful to say today. If a counterproposal is made, the impasse is broken, precisely because there is something to negotiate over.

There are two broad categories of management counterproposals: serious and frivolous. A serious counterproposal reflects a good faith effort to successfully address the subject of the union proposal. The union might agree to the counterproposal as written, or suggest some minor changes, or come up with a different approach. The key thing is that the parties are substantively attempting to reach an agreement.

A frivolous counterproposal need not waste our time . The union's answer to a frivolous counterproposal is a simple "no." At that point, by definition, the parties are at impasse, just as they would have been had management made no counterproposal at all.

A couple of questions:

What if we go through our initial proposals and management neither agrees to anything nor makes any serious counterproposals? Isn't that really unfair? How can we make management bargain with us in good faith?

First of all, the members have identified the bargaining objectives. Our job is to reach those objectives whether or not management bargains in good faith. Under the scenario you describe, the worst that can happen is that in

a month or two you have an impasse-resolution hearing, where you will present all the evidence you developed before bargaining even began. In fact, however, it is highly likely that either the mediator or the FSIP staff will convince management to start real bargaining before that point is reached.

But if management never bargains in good faith, so much the worse for them. We win.

What if, under the above definition of impasse, we find ourselves at impasse over the entire contract or huge portions of it? That actually creates a problem only if there are scores or hundreds of provisions at issue. If you are only bargaining over the highest priority demands of the employees, the total dispute will be manageable.

But if we are ordered back to the bargaining table? At least we are no worse off than we would have been had we spent the intervening weeks jawing at a management negotiating team with no interest in reaching agreement. And, the outside third parties now have a baseline from which to measure the reasonableness and problem-solving efforts of each side.

3. One person speaks for the team

Nothing should be said at the bargaining table by anyone which has not already been agreed to by the bargaining team.

This can be achieved in several ways. Some teams simply have the chief negotiator be the only one who talks. More often, teams leave it to the chief negotiator to call on team members at appropriate times.

The big thing is that no one, ever, says to management at the bargaining table "**I** think we should do . . ." or "We've not talked about this on the union side yet, but how about . . ."

The best way to handle an issue that comes up, but has not been discussed by the team, is to call a caucus. The rule should be that any member of the bargaining team can call a caucus any time he or she is afraid something might be going wrong. The member slips the chief negotiator a note, and the chief negotiator announces the union is going to caucus; the chief negotiator does not make a judgment of whether there actually is a need for a caucus or not.

4. Publicize what is happening

Every week or so announce to the employees the subjects that have been tentatively agreed to, and list those which have been discussed but no agreement reached.

Remember, you should never, ever, agree to ground-rules restricting the union's right to communicate with the employees it represents.

Every time management refuses to bargain provide the employees a copy of the union proposal and a statement that, "Management refuses even to discuss this subject." Use your bulletin boards, e-mail, newsletter, and every other medium of communication at your disposal.

Periodically distribute a document having two columns. In the left hand column, put the text (or a summary) of the union proposals. In the right hand column, put the text of the management proposal; or, if there is none, state, "Management has no proposal on this subject."

5. Keeping track of progress

The following process will help you keep track of the progress of negotiations, although it is not mandatory.

The important thing is that you do not end up in a situation where you and management argue about whether on

some previous day you had reached a tentative agreement on some subject.

Every time a provision is agreed to at the bargaining table, the two chief negotiators should initial and date the text. The union must either hold on to the original or must immediately obtain a photocopy so that it always has a complete and accurate record.

What is a "provision"? Is it a sentence, a paragraph, a section, or an article? It depends on what you intend. If some language has been agreed to which would be good if accompanied by another part of the union proposal, but bad if accompanied by another part of the management proposal, then don't initial that language, no matter how long or short it is.

If some language has been agreed to that satisfactorily achieves one of the union's objectives, regardless of what happens to the rest of the contract, do initial it.

Every time a proposal is withdrawn the two chief negotiators should initial and date a statement of this fact.

If management refuses to initial agreements and withdrawals, force them to state their position out loud. For example, ask management whether the parties have reached agreement on Article III, Section 5, as initially proposed by management, or have they not? Note management's response on the union's copy of the proposal.

Copies of all the initialed material should be immediately placed in a loose-leaf binder maintained for this purpose.

Post on the wall of the negotiating room a complete list of articles and sections that are being negotiated. Next to each provision have columns for "agreed," " withdrawn", "refused to bargain," and "impasse." Write down the date any of these occurs with respect to each provision.

G. HANDLING NEGOTIABILITY DISPUTES DURING BARGAINING

"That's non-negotiable" is management-speak for saying that the duty to bargain does not extend to a proposal or provision. Management's claim may be that bargaining is illegal or prohibited, or merely that the proposal is on a permissive subject that management chooses to not bargain.

Ultimately, there is not much difference between, on the one hand, management saying our proposal is non-negotiable, and, on the other hand, management rejecting our proposal but failing to address the issue with a reasonable proposal of their own. Actually, the difference is between management honestly admitting that it is not even trying to bargain in good faith, and management refusing to bargain in good faith but claiming otherwise.

Management's negotiability concerns should be looked at as simply interests that they want respected by the agreement. If management is interested in bargaining in good faith, they will join us seeking language that achieves the interests of both parties. If that is successful, we certainly don't care about 'negotiability.'

If language is contested through negotiability procedures, that involves certain very formal and specific steps that the union must take within strictly-defined time limits. Failure to follow those procedures results in losing the ability to negotiate for the contested language.

The main thing to do when management refuses, on the ground of negotiability, to seek the objectives of the union proposals is to simply publicize this fact. "Management refuses to even discuss [describe the problem addressed by the union proposal]". That type of refusal is rude, crude, and indefensible. Many managers will join the rank and file employees in criticizing a refusal to even discuss how to solve what everyone agrees is a problem.

At the same time, you should initiate the negotiability appeals process. If management is not going to negotiate,

let them litigate. That process is described in a later chapter of this manual.

> The deadline for filing a negotiability appeal does not begin until management gives us a written allegation in response to our written request for an allegation. Unless and until we make a written request, there is no deadline for us to file a negotiability appeal. Thus, the union has total control over whether and when to initiate the negotiability appeals process. Normally, there is no reason to wait once management makes clear it in fact is not bargaining over the issue.

H. DECIDING WHETHER MANAGEMENT'S BEST OFFER IS GOOD ENOUGH

If subjects remain at impasse despite the mediator's efforts, the union has to decide whether it is worth its time, energy, money and effort to continue to fight over the differences in the two sides' proposals.

At this point in the bargaining, the union negotiators have spent days or even weeks doing their best to convince management of the need for the union proposals. It is not always easy to determine whether the last management counter-proposal—while a rejection of the union's own demands—in fact comes close enough to the union's objectives to be acceptable.

At the same time, it may be difficult to accept the fact that one has been unable to persuade management to points which one knows to be correct.

Almost every union in the United States submits the issue of accepting or rejecting management's last offer to the affected members. They were the ones who established the bargaining objectives, and they can best make the judgement whether those objectives have been sufficiently achieved or, if not, whether they want to pay the price of continuing to struggle for them.

Some people believe that AFGE members do not want to make these types of decisions for themselves, that they elect their local leaders to make those decisions for them.

This may have made sense before the members got involved in setting the union's bargaining objectives, and when bargaining seemed focused on hyper-technicalities understandable only by union experts and management experts. Now, though, AFGE members, like the members of every other labor union in the United States, are able to make rational and responsible decisions as to whether bargaining has or has not sufficiently achieved their objectives.

Continuing to fight for the objectives means either bringing membership pressure, or submitting the dispute to a third party to resolve the impasse, or both. None of these is cost-free.

Only union members can vote to accept or reject management's last best offer. This opportunity to vote is a way to participate in setting one's own working conditions, and there is no such thing as a free ride on participation.

I. MEMBERSHIP PRESSURE IN SUPPORT OF BARGAINING DEMANDS

Negotiations should not only be conducted within the confines of a conference room. The Union can use its membership to put pressure on management utilizing many of the same tactics that are used in the private sector. Although strikes are illegal, as is picketing that interferes with the agency's operation, there are a whole host of other ways to rally employee and community support for the union's position. These include:

Consult "Power Tools for Grassroots Legislative and Political Action"

- leafleting in-house and to the public
- ads in local newspapers
- rallies
- well-attended membership meetings
- wearing armbands, ribbons or buttons
- informational picketing
- picketing by other unions in our support
- petitions
- picketing the managers' homes
- marching into work together
- one minute stand-up on the job

Collective actions vary in the amount of commitment and risk. The first actions should be as risk-free as possible. As negotiations proceed, the union can increase pressure on management by escalating employee involvement. You must build a safe environment for employee participation. Don't expect employees to be willing to immediately engage in informational picketing. You must build up to that level of participation. Wearing a button or a ribbon at work is generally a fairly safe, risk free act and most employees would be willing to wear a button.

Once the employees see their co-workers also wearing buttons, the employees will feel empowered and will be willing to increase their commitment and risk taking. Next, you may have all the employees wear the same color shirt, or send postcards to the employer or a Congressional

representative (This can be effective if the employer is taking unreasonable stands or is bargaining in bad faith.) Eventually, you can engage in effective informational picketing. By gradually escalating the action, you are putting increasing pressure on management.

In order for this strategy to work, there are two important factors that need to be considered. First, you must build a strong communication network. If employees don't know the issues, they will not support the Union's negotiating team. Employees should be apprised of the negotiation's progress on a regular basis. E-mail, work area meetings (during breaks), membership meetings, flyers, bulletin boards, and newsletters are just a few ways a local can effectively communicate to its members.

It is essential that this communication be systematic and that every employee in the bargaining unit is kept informed. To accomplish this task, one of the negotiating team members should be given the responsibility for coordinating this communication.

Second, you must find an issue that is important to the employees. Official time and the size of the union office space are institutional issues and generally employees don't really care how much official time a union official receives. However, proposals dealing with contracting-out, flexi-place, alternate work schedules, and the number and size of break areas are issues that employees generally care about.

As discussed previously, the members themselves will have established the priority bargaining objectives, so the bargaining team will know exactly which issues are most important to the employees. Those are the issues to mobilize around.

By mobilizing your membership in support of the negotiating team, you will also have the side benefit of building your membership. After all, if during bargaining management starts receiving numerous membership applications, it sends a very powerful message that the employees are supporting the union and the union will also have increased its revenue and thus its ability to enforce the contract.

If you mobilize your membership, think out of the box. Employees are more likely to participate in your activities if they are fun and creative. Some of the actions taken by other unions include:

- flew balloons full of management's hot air outside the activity's office;
- rang cowbells for two minutes at their work stations to wake management up;
- community "trial" of the employer;
- mock funeral
- wore bandaids, crutches, canes, eye patches, etc. to work, with slogans such as "We're sick of the employer bargaining in bad faith"

J. WINNING THROUGH THIRD PARTY IMPASSE RESOLUTION

In the federal sector collective bargaining law, congress attempted to provide a fair alternative to the right to strike. Third parties are authorized to impose on the union and management the contract terms which presumably would have been voluntarily agreed to at the end of a strike.

For this impasse-resolution procedure to work to the union's greatest advantage, however, it must be preceded by reliance on membership pressure. We want the third party to choose between the union's proposals and the most that management is willing to give under pressure, not between the union proposals and the best management was willing to offer without being pressured.

Unless they reach a voluntary agreement, the parties will always have to go through mediation by the Federal Mediation and Conciliation Service. After that, they must decide whether to submit the remaining disputes to the Federal Service Impasses Panel or to a jointly chosen arbitrator.

Note that the FSIP will not resolve any dispute which, in its opinion, involves subjects outside the mandatory scope of bargaining; nor will it approve an arbitration agreement covering such subjects. See chapter VI of this manual for a discussion of the scope of bargaining.

1. Mediation

The Federal Mediation and Conciliation Service (FMCS) is an independent federal agency. The director is appointed by the President with the advice and consent of the Senate. The FMCS has a staff of federal mediators located throughout the country.

The mediator has no authority to make any decisions on the merits of a dispute. He or she is not an arbitrator.

The mediator's role in federal sector negotiations is two-fold: help the parties actually reach agreement; certify to the FSIP that the parties are unlikely to reach agreement on their own.

For the reasons discussed above, progress in negotiations is nearly impossible if management will not even state the reason for its rejection of union proposals. The greatest service a mediator can provide is to persuade management to start doing this.

The mediator can help the union understand its own true reasons for various proposals, as well as help you put the issues into some kind of priority order.

The mediator will nearly always try to persuade you to drop whatever demands seem to be most resisted by management. You do not owe the mediator any favors. However, you should be open to deciding that a particular issue is not a high priority, so that its abandonment is no tragedy.

The mediator cannot and will not testify or otherwise get involved in disputes about intent or bargaining history.

Often, the efforts of the mediator will lead the parties to an agreement. If so, jump to chapter III of this manual, which addresses what to do when agreement is reached.

2. Submitting the dispute to the Federal Service Impasses Panel.

Unless the parties agree otherwise, either party can insist that disputes remaining after mediation be submitted to the Federal Service Impasses Panel (FSIP).

The FSIP is composed of a chairman and at least six other members appointed by the President for a term of five years. However, the president may remove any panel member.

Under Section 7119(c) of the Statute, it is the responsibility of the Panel to consider negotiation impasses and to take such action as it considers necessary to settle the impasse.

The primary basis the Panel uses to decide a issue is whether the party proposing the change has demonstrated a need for the change. It should be relatively easy for the union to prevail if its proposals were originally developed on the basis of the employees' needs and if factual research has been completed before the dispute reaches the Impasses Panel. Example of evidence include past grievances, statements by management asserting that the current contract doesn't provide the benefit in question, as well as responses to surveys.

a) Basic procedures and options

The submission to the Panel will include all the information listed on FSIP's form Request for Assistance.

> You must consult the FSIP's A Guide: to Dispute Resolution Procedures Used by the Federal Service Impasses Panel

After receipt by the Panel of a request for assistance, it will contact the person filing the request to make an initial inquiry to determine whether the Panel will accept jurisdiction in the matter.

If the Panel accepts jurisdiction, it can use any of a variety of processes of mediation and arbitration to resolve the disputes. The parties' positions on what

process to use are solicited, but the Panel make the ultimate decision on how to proceed.

b) Prehearing conference

No matter what process is being used, a major first step is usually a prehearing conference involving the parties and a Panel representative. At the conference, the union should:

- Clearly define issues—what is and is not in dispute
- Outline its case
- Identify its witnesses
- Provide copies of the exhibits it expects to use
- Ensure there is a final, clearly written proposal on each issue in dispute
- Explain any ULPs that it has filed related to the bargaining
- Make sure it understands management's case

Note that sometimes the FSIP officer conducting the prehearing conference might decide that there is no need for a hearing, so the case is really decided on the basis of what the parties presented at the conference.

c) The hearing

- Filing a prehearing brief can be most helpful.
- The opening statement on each issue is very important. It should detail what you intend to establish, and thus enable the factfinder to determine relevance and rule on objections.
- Technical rules of evidence do not apply (i.e., hearsay).

• All regulations, contracts, etc., relied upon should be introduced as exhibits—make sure regulations are current— point out relevant portions (highlighting helpful)

• When negotiability problems are raised at the hearing stage, you should be prepared to address both jurisdictional and substantive issues. The Panel is bound by Authority rulings, so it is important that you know what those decisions say.

• Remember that a finding that a dispute is negotiable does not mean there is any merit to the union's position; you still have to show why that position should be adopted.

• At times, it is preferable for the representative to be sworn and to testify in a narrative fashion.

• A closing statement is not required but is often preferable to having to file a post-hearing briefs.

3. Submitting the dispute to voluntary arbitration

As long as they get the FSIP's approval, the parties can adopt alternative impasse-resolution procedures. Usually this means jointly hiring someone they both respect, and having him or her hold a hearing and decide what the contract terms will be.

The major advantage to using a private arbitrator is that the person picked will have some sense of dedication to the interests of the particular agency and to you, as the union involved. There is a significant expense to the union, but that can be estimated in advance because you will know exactly what the issues are and what the evidence each party has.

K. MISCELLANEOUS BARGAINING TIPS.

The union's basic objective in bargaining is to obtain better working conditions.

The following suggestions are designed to facilitate the reaching of sound agreements in negotiations. The first rule you should follow is to be yourself. Use an approach which is consistent with your own personality, experience, and background. Some highly successful negotiators are "table thumpers" while others are quite reserved. Each is effective if they use their personalities to their own advantage.

No negotiator should try to copy the technique that he or she has observed in another when their personalities are completely different.

It is vital that the negotiator be ethical. The negotiator is dealing with a long-range, highly personal relationship which has all the daily frictions of the typical marriage, but without much likelihood of divorce. Thus, a temporary gain made through deception or distortion of facts will surely, in the long run, hurt the union.

Start discussions from areas of common agreement rather than from an obviously controversial matter. Secure a basis of agreement on which to build and you will find that subsequent favorable accommodations are more easily reached on disputed issues.

Do not indicate that you lack confidence in the reasonableness of any major proposal. The best way to follow this rule is to not propose anything which you do not believe is reasonable.

It never hurts to be gracious. If you win a point, credit the other party for sincerity and fair-mindedness. To gloat over minor victories may make it impossible for the other side to offer reasonable compromises without resentment and embarrassment.

Keep in mind that each party should be prepared to explain in detail its reasons for making or rejecting any demand or proposal. Furthermore, there are many times when the

burden of proof shifts to management— particularly in management-initiated proposals or where management has information that is not available to the union.

Some people make the mistake of treating negotiations as a marathon college debate. While it is important to make your points, after they have been made and management has responded, don't continue to beat a dead horse. Record the issue as at impasse and move on.

Remember that you are engaged in collective bargaining, not begging. Be quick to demonstrate respect and courtesy; be equally quick to demand the same consideration.

By far, the most fruitful atmosphere for reaching sound agreements is the recognition by both parties of a mutual interest in solving problems of common concern. The greater the degree of objectivity that can be developed, the more constructive the relationship. It takes considerable time to overcome personality-centered clashes which mar the relationship. Collective bargaining at its best is a systematic, conscientious search for answers that work; answers which minimize frustrations.

The least productive bargaining is simply playing games with each other, where tactics are deliberately used to frustrate the other side and impede joint problem-solving in favor of manipulation of one side by the other. When management tries to do this, just don't play. Indicate that a disagreement exists, then proceed to other issues. It is much better to concentrate on preparing convincing arguments for the impasses panel than to talk to a management team which has no intention of really listening.

Examples of unacceptable tactics include:

- stalling, being chronically late, or losing documents;
- taking regular, extended caucuses and returning late from lunch;
- threatening that the employees will be harmed unless the union backs down;
- refusing to look for ways to overcome scope of bargaining problems; presenting a moving target, always finding a new reason for rejecting the union's

proposals after management's previous objections have been overcome;

- rudeness and failure to control anger, thus shifting the focus from facts to emotions;
- management telling the union to make a counter-proposal to the union's own proposal, (or suggesting that management would consider such a counter-proposal).

The collective bargaining process certainly has shortcomings as a means of resolving conflicting interests in employment. However, it is superior to any known alternative for adjusting differences in a free society. It is worth the continuing effort by persons of honorable intent to improve its functioning.

In addition to constant improvement of your knowledge and skills , successful bargaining requires hard work, thorough research, and preparation, including prioritizing issues and the development of strategy. It also requires patience, goodwill, and flexibility since compromise is an essential component.

Sometimes negotiations get bogged down because each side is more concerned over whose draftsmanship will appear in the contract rather than the meaning of the language. Don't be afraid to work from management's language, if necessary, after it has been analyzed and required changes have been made to reflect the union's needs.

All disputes within the union team should be resolved in private caucus since the union committee must be united at the bargaining table.

A "useful tactic to use from the first day is to get both teams into a "yes' habit. Among other things:

- Attitude: Be agreeable whenever possible. Your presentation often gets results that the virtues of your proposals cannot alone produce. Be friendly, tactful, amusing, firm, conciliatory, or feisty as best suits the occasion. Few management officials can be badgered into doing

what you think is right. Present yourself as one who wishes to find out rather than one who knows all the answers.

- Those who already agree with you may be biased, but your arguments are not aimed at them. To win over the opposition, you must appear to be governed by the inescapable facts rather than personal opinion.

- Agree with the opposition but only as far as you can. Such an approach will establish your reputation for fairness.

- The points you cannot concede to management's team should be rebutted. Anticipate management's arguments.

- Listen actively. You can't effectively demand courtesy from management unless you demonstrate courtesy yourselves.

- When management agrees with your position but proves a conflict with an agency-wide regulation, ask them to join you to obtain an exception to the regulations or to draft contract language that ends the conflict but addresses the underlying problem.

- You can strengthen your case by appealing to management's sense of justice and fair play. Remember you must not only explain, you must also convince. Be humorous, surprised, or offended as best suits the situation,

III WHAT HAPPENS WHEN AGREEMENT IS REACHED?

Even when the two negotiating teams have reached a complete agreement on the terms of a contract, several steps must be taken before the contract goes into effect. Until those steps are completed, the contract is still a tentative agreement.

A. WHAT IS A TENTATIVE AGREEMENT?

The parties have a tentative agreement when they have, one way or another, disposed of all the proposals that have been presented. If you have kept decent records, it should be clear when that point is reached.

B. MEMBERSHIP APPROVAL AND EXECUTION

The tentative agreement should be voted on by the members. It is not necessary that they have the final text, as long as they are provided accurate summaries of the major changes. If the members disapprove the contract, you have to go back to the bargaining table to fix whatever the problems were. Therefore, it is essential that if there is any risk of defeat, there be plenty of debate, so the negotiating team knows exactly what the problems are.

> Only union members can vote to approve or disapprove a tentative agreement. This opportunity to vote is a way to participate in setting one's own working conditions, and there is no such thing as a free ride on participation.

Disapproval of the tentative agreement should not be felt as a criticism or repudiation of the negotiating committee. Without the risk of membership disapproval, the union negotiators cannot credibly reject management proposals on the grounds that those proposals are so unpopular with the members that they would threaten the entire contract.

Once the tentative agreement is approved by the membership, the union and management chief negotiators should execute a complete agreement: that is, sign and date it.

C. IF THERE ARE PENDING NEGOTIABILITY DISPUTES

The FLRA sometimes takes years to decide negotiability disputes. It is not uncommon, therefore, to have a situation where the parties have reached agreement on everything they bargained on, but they have bypassed the issues which are the subject of negotiability appeals. In most cases, the parties agree they have a complete new contract, subject to reopening if the FLRA rules in the union's favor on negotiability. That agreement can either be placed in the contract's duration clause, or may take the form of a separate memorandum of understanding.

In other cases, the parties will agree that the tentative agreements on all the other provisions really are dependent

on the outcome of any bargaining on the disputed proposal.

And in a few cases, one party will want to complete the contract, subject to later reopening, while the other party will want to leave the contract uncompleted until the FLRA decides the negotiability issue and any further bargaining takes place. Whether it is the union or it is management that wants to delay will depend on the facts of the particular situation.

In rare situations the agency may try to insist that the parties hold up the effective date of the overall contract until the negotiability issues have been dealt with. In these cases, the local should consult with its National Representative, who will, if necessary, discuss the matter with OLMR.

D. AGENCY HEAD REVIEW

When an agreement has been reached in bargaining, management is required to immediately send it to the head of the agency for review. If he or she does nothing within 30 days, the agreement becomes binding automatically. If he or she approves the agreement within 30 days, it becomes binding on the date of approval. If he or she disapproves the contract within 30 days, the parties have to deal with the situation.

This process is full of anomalies. The only basis for disapproving a contract is extremely is extremely narrow—that the contract contains a provision so illegal as to be unenforceable. The inclusion of an unenforceable term may be untidy, but management can hardly be said to be injured by it.

The agency head almost always delegates his or her authority to approve or disapprove contracts to a different management official than the agency head had delegated authority to negotiate the contract.

In practice, agency head disapproval of a contract is often a power play by some irresponsible headquarters bureaucrat who wants to override the judgement of the management officials who are responsible for getting the job done.

It is not clear why managers continue to put up with this violation of their right to manage according to their best judgement.

In addition, the way the law reads, the agency head disapproves the entire contract as a whole, even though there is seldom any dispute over more than one or two provisions. The parties have to decide whether to implement the rest of the contract while litigating the specific provisions the agency head objected to.

1. When does the agency head's 30 days begin?

The 30 day period for agency head review begins on the date the contract is "executed." Normally, executed means signed by the two chief negotiators as a final agreement (even though, by definition, it is not yet final).

The period starts on the date of execution, not on the date the agency head receives the contract. If management neglects to forward a contract for agency head review, or fails to do so in sufficient time for the agency head to act, then the contract becomes automatically effective on the 31st day.

2. How to challenge agency head disapproval

An agency head's disapproval of a contract is tantamount to a written allegation that specified provisions are outside the scope of bargaining. The union has ten days from receipt of this allegation to file a negotiability appeal with the FLRA. Once that appeal is filed, the case proceeds exactly as do cases which arise during bargaining.

Meanwhile, however, it may be possible to reword the disputed provision in a way that meets the legal problems without reducing the benefits to the employees. If that succeeds, you can then withdraw the negotiability appeal.

This printing of the manual reflects changes through 7/12/02. Check the OLMR portion of the AFGE website to ensure that this is the most recent version.

IV BARGAINING DURING TERM OF THE AGREEMENT

At least as important as negotiating an overall collective bargaining agreement every three or four years is the bargaining that occurs during the term of that agreement.

Other important issues that arise during the term of an agreement can include meetings that management has with the employees. See FLRA General Counsel Meetings Guidance

Mid-term bargaining can come up in a number of ways. First, and foremost, management may take actions, such as reducing the total number of employees, which necessarily affect working conditions. Second, there might be changes in laws or government-wide regulations which have to be implemented. Third, there may be subjects which were not addressed in the contract negotiations, but which one side or the other now wishes to deal with. Fourth, the parties may simply agree to revisit certain subjects before the overall contract expires.

A. WAIVER OF BARGAINING RIGHTS AND OBLIGATIONS

The main reason for a duration clause in a contract is that the parties want to leave unchanged the terms of that contract for a set period of time. Both parties know they will not have to deal with those particular issues again until the contact expires. In effect, both parties are waiving some of the rights they would otherwise have to make on insist on changes.

These waivers are seldom set out expressly, in understandable English, and in many cases management has falsely but successfully argued that the parties had agreed to a completely one-sided waiver.

If the union and management sign an agreement on some subject, without specifying any duration, then they do not waive any rights and obligations to bargain about that subject at any time in the future. The agreement, however, remains in effect and governs the subject until and unless

the parties agree to amend or discard it. Either party can force the other party to the bargaining table and to the Federal Service Impasses Panel.

It is, therefore, imperative that your contract plainly state what can and what cannot happen during the term of the agreement. First, the parties must choose what they mean by "covered by the contract." The two basic choices are these:

A condition of employment is covered by this agreement only to the extent that changing that condition would require changing an express provision of this agreement.	A condition of employment is covered by this agreement if the general subject area is addressed or if either party had unsuccessfully proposed a provision within the general subject area.

Both these definitions are possible, and each has its own benefits and drawbacks. The critical thing is that the parties expressly adopt one or the other. The obvious drawback to the second option is that it does not allow the reader of a contract to know what it covers and what it does not. An entire subject area which is not even hinted at in the contract might be deemed covered by the contract because the union had proposed provisions in that area but for whatever reason had withdrawn those proposals.

Once the parties tentatively agree on the meaning of "condition of employment covered by this agreement", they must turn to the actual waivers they intend. There seem to be three major options:

Conditions of employment not covered by this agreement will remain in effect throughout the term of the agreement. Both parties waive their rights to	Conditions of employment not covered by this agreement may be changed only by agreement of the parties. Neither party waives its right to initiate	Conditions of employment not covered by this agreement may be changed unilaterally by management. The union waives all its bargaining rights on these

initiate changes on these matters.	changes on these matters.	matters. Management waives nothing.

The first two are both reasonable, and each has its own benefits and drawbacks for each of the parties, strongly affected by the definition of "condition of employment" that they agree to.

The third option is ridiculous, and should never be agreed to by the union. It is, however, precisely the option which the Federal Labor Relations Authority infers the parties did agree to if they have not expressly considered the waiver issue.

It is important to consider the FLRA General Counsel's Impact of Collective Bargaining Agreements on the Duty to Bargain . . . Guidance, even though it is not always correct in its advice.

There is one other issue that needs to be expressly addressed, and that is the effect of the agency's own regulations that existed at the time the contract was agreed to. The two major options seem to be:

Agency policies and regulations consistent with this contract and in existence at the time the agreement was approved will remain in effect except to the extent changes are required by law or federal regulation. The terms of any such changes will be negotiated by the parties.	Agency policies and regulations not covered by this contract can be changed at the initiative of either party followed by the agreement of both parties.

Again, it cannot be said that either of these options is better or worse than the other. The critical thing is that the parties expressly agree on what they want to do with existing policies and regulations.

B. MANAGEMENT-INITIATED CHANGES AFFECTING WORKING CONDITIONS

Except as discussed above, throughout the life of the contract management may propose changes to policies not controlled by the contract. Absent a waiver by the union, none of these changes can occur except by the agreement of the union or by order of the Federal Service Impasses Panel.

Contractual waivers of the union's bargaining rights are discussed above. It is possible, however, for the union to waive its bargaining rights through inaction. If management informs the union that it intends to change a regulation, and the union ignores this notice, management is free to implement the change. Management some times tries to cheat, by unilaterally setting a short deadline for the union to demand bargaining, and treating the union's failure to meet that deadline as a bargaining waiver.

The easiest thing to do is to simply respond immediately with a generalized demand to bargain followed up with ground rule proposals, information requests, and substantive proposals as time allows. A generalized demand would read as follows:

> Local ____ hereby demands to bargain on the proposed changes identified in the attached notice from management. Presuming information requests are timely responded to, we propose that bargaining begin at 9:00 a.m. four weeks from today. Until we have considered the matter more thoroughly, we propose that the policy addressed by the attached notice be left unchanged. We may provide additional proposals later.

If the union had not even been notified of the proposed change before it went into effect, your bargaining notice should contain a demand that the change be rescinded pending completion of bargaining. Whether or not management complies with this demand, file a grievance or unfair labor practice charge challenging the original unilateral action.

C. UNION-INITIATED CHANGES IN WORKING CONDITIONS

Except as discussed above, throughout the life of the contract the union may propose changes to policies not controlled by the contract; this is usually done by proposing changes in agency regulations. A failure to respond to these proposals should be treated as an impasse, and the impasse resolution process discussed elsewhere in this manual should be followed.

D. REORGANIZATIONS, RIFs, AND CONTRACTING OUT

There are several stages in a successful fight to save employees' jobs in the face of a management decision to reorganize or contract out:

1) Develop a better reorganization
2) Propose to bargain
3) If management refuses to bargain, fight politically
4) Bargain appropriate arrangements for those who nevertheless will be adversely affected

1. The merits of the reorganization

Consult "The Activist's Revised Personal Consultant to A-76 Policy Implementation and the FAIR Act"

Employees, through their union, can often develop ways of achieving the mission of the agency more effectively and less expensively than plans management develops.

Consult "How to Defend Your Jobs from Congressional Cutbacks"

Once you have developed the alternative to management's plan, you need to formally propose it and formally offer to bargain over it. If management accepts the offer, bargaining proceeds as on any other subject—except, because legally this is a permissive rather than mandatory subject for baragining, it is not illegal for either party to stop bargaining at any time. Part of the union's job is to persuade management to continue to bargain until agreement is reached.

If management refuses to bargain in the first place, or it withdraws from bargaining without an agreement, the political fight must begin.

The critical point to keep in mind is that management's refusal to even talk to the union about making the agency work better and cost less is literally indefensible. Management is faced with a dilemma: either enter a process that will result in the union saving the employees' jobs, or admit to the taxpayers (and their congressional representatives) that effectiveness and cost savings are less important than management's prerogatives.

Once management is forced to the bargaining table by political pressure or public opinion, its ability to arbitrarily reject the union's position on the merits will seriously compromised. That is to say, management will be motivated to actually bargain in good faith.

2. The effects of the reorganization

At the same time we are fighting to revise the reorganization so no one will be hurt, we are entitled to bargain on behalf of each employee who would be adversely affected by the management plan.

Indeed, management is not allowed to implement its reorganization until bargaining over each employee's situation has been completed, either by voluntary agreement or by third-party impasse resolution. This provides a certain incentive to management to either revise the reorganization so no one will be adversely affected, or to treat each adversely affected employee fairly and reasonably.

Consult "Preparing for Reductions in Force: A Survival Guide for AFGE Leaders"

V CONTRACT EXPIRATIONS AND ROLL-OVERS

Almost by definition, a comprehensive collective bargaining agreement has an expiration date. A collective bargaining agreement with an epiration date is a "term agreement." Here is what that means in practice.

A note on nomenclature: legally, all of the following mean the same thing:

contract
collective bargaining agreement
memorandum of understanding
memorandum of agreement

Practitioners tend to use the first two terms to describe comprehensive agreements that have duration clauses (e.g., "this contract will remain in effect for three years") and grievance procedures. They tend to use the second two terms to describe agreements that cover individual subjects and which do not have duration clauses or their own grievance procedures. The labels, however, have absolutely no legal effect.

A. CONTRACT EXPIRATION

When a term agreement expires, usually after three years, there is often a period between the expiration date and the effective date of the next contract (due to the time it takes to complete bargaining and then complete the approval process). During that period, an agency may be tempted to make changes to the old agreement. If a national or regional contract is involved, the same local changes may be proposed at numerous activities around the country during the same open period.

Certain rules of law affect this situation:

1) The labor relations law requires maintaining the status quo on mandatory subjects unless they are changed through

the collective bargaining process, that is, by notifying the other party and bargaining upon demand concerning the proposed change.

2) The labor relations law also permits either party to unilaterally rescind provisions on permissive subjects by notifying the other party.

3) Parties can agree by contract to obligations beyond what the Statute requires.

4) Efficiency and stability are overriding considerations in labor-management relations. It generally makes no sense to introduce individual changes to the term agreement after it expires and during the period when the parties are negotiating the next term agreement or are preparing to do so.

The FLRA has held it is legal to provide such efficiency and stability through provisions in agreements that require "Conditions created by this collective bargaining agreement will remain in effect while a new agreement is negotiated." This kind of language avoids piecemeal changes made after the expiration of a term agreement on matters that will be renegotiated as part of the next term agreement.

B. ROLLING OVER

The typical AFGE contract provides that if neither party moves to reopen during the period 120 to 90 days before the contract expiration date, the contract is automatically renewed or extended for a year. If nobody moves to reopen during the open period toward the end of that year, there is another automatic renewal. And so forth.

For all practical purposes, the contract during the extension period is identical to the contract during the original period.

VI SCOPE OF BARGAINING

A. SIGNIFICANCE OF SCOPE OF BARGAINING ISSUES

All possible bargaining subjects fall into three categories:

mandatory,
permissive, and
illegal or prohibited

> It is extremely useful to consider the FLRA General Counsel's Scope of Bargaining Guidance

If a proposal is within the **mandatory** scope of bargaining, management cannot legally refuse to bargain over it; the Federal Services Impasses Panel can impose it on the parties; and either party can tie agreement on that proposal to agreements on other mandatorily negotiable proposals.

If the proposal is **permissive** or **illegal**, either party can legally refuse to bargain over it; the Federal Service Impasses Panel cannot impose it as a contract term; and it an unfair labor practice for either party to condition agreement on a mandatory subject upon agreement on the non-mandatory proposal.

In addition, an agreement on an **illegal** subject is void, and either party may, with impunity, repudiate that agreement. In contrast, an agreement on a **permissive** subject is binding for the life of the contract.

B. ANALYZING SCOPE OF BARGAINING ISSUES

It is useful to understand the basic framework used by the FLRA for deciding negotiability cases.

1. "Affecting working conditions" or not

The FLRA first determines whether the proposal generally concerns conditions of employment in a union's bargaining unit. They nearly always do, otherwise why would you be making the proposal? If so, it then is management's burden to persuade the FLRA that the proposal is nevertheless outside the mandatory scope of bargaining. The union does not have to show that Congress explicitly placed the particular subject within the mandatory scope; management must show the exclusion was intended.

2. Excluded by law or government-wide regulation

To rely on this exception, management first has to show there is an actual law or government-wide regulation, in contrast to mere OPM guidance or to some lawyer' s peculiar understanding of the law.

Management then has to show a clear inconsistency between the union's proposal and the law or regulation. The critical test here is whether the law or regulation would allow management, in the absence of a union, the discretion to adopt the policy that is now being proposed. If so, the proposal is within the scope of bargaining. In this situation, management must bargain within the limits of what would otherwise be its discretion.

3. Excluded by other regulation

The labor relations law states that if AFGE represents the majority of eligible employees in an agency or primary national subdivision (e.g., DOD as the agency or the Air Force as a primary national subdivision), regulations of the agency or subdivision, respectively, have no limiting effect on the scope of bargaining. At the present time, however, AFGE does not represent the requisite number of employees in DOD or any of its primary national subdivisions. Therefore, management within DOD can refuse

to bargain over a proposal that would change an agency regulation, but only if there is a compelling need for the regulation. That situation exists in many other agencies and agency subdivisions.

Fortunately, management is rarely able to meet the compelling need standard.

4. Prohibited by section 7106(a)

The management rights provision (Section 7106(a) of the labor relations law) reflects Congress' fear that the union negotiators are so much more skillful than management that, unless restrained, management will simply abdicate its responsibility to basically run the agency.

Probably every matter that affects working conditions also affects management authority in section 7106(a) areas. The FLRA and the courts have given a more restrictive reading to much of section 7106(a). Most importantly, they have created a distinction between the exercise of a subsection (a) right and the procedures by which that right will be exercised as well appropriate arrangements for employees adversely affected by management's action. That distinction is discussed below.

§ 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.

Authority to Determine its Budget: In *Wright-Patterson,* 2 FLRA No. 77, the Authority constructed a balancing test for determining when a proposal violates management's rights to determine its budget. In *Wright-Patterson* the Authority found that:

The Agency's authority to determine its budget extends to the determination of the programs and operations which will be included in the estimate of proposed expenditure and the determinations of the amounts required to fund them. Under the Statute, therefore, an agency cannot be required to negotiate those particular budgetary determinations. That is, a union proposal attempting to prescribe the particular program or the operations the agency would include in its budget or prescribe the amount to be allocated in its budget for them would infringe on an agency's right to determine its budget under section 7106(a)(1).

In *AFGE Local 1857*, 36 FLRA No. 85, the Authority devised a two prong test for determining if a union proposal violated management's right to determine its budget. The first test is very narrow. Under this test, a proposal cannot specify the program to be included in an agency's budget or the amounts to be allocated to those programs. Even if a proposal does not attempt to determine the programs or the amount of money to be allocated to those programs, the Authority still might determine that the proposal is outside the scope of bargaining. Under the Authority's second test, the agency must make a substantial demonstration that the proposal would lead to increased costs that are significant, unavoidable and not offset by compensating benefits.

If management claims that a union proposal is non-negotiable because it directly interferes with management's right to determine its budget, the union should demand that management demonstrate at the table how each of the two prongs of this test are met. At the table, the union should demand that the agency show how the proposal requires a particular amount or item to be included in the agency's budge; AND how the increased costs required by the proposal, if any, outweigh the benefits. If management cannot demonstrate both of those factors, then the proposal is clearly negotiable. Once the union convincingly demonstrates that the benefits outweigh the additional costs, then there should no reason for the agency to refuse to agree to the proposal itself.

To Determine its Organization

An agency has the right to determine its organizational structure. The right of an agency to determine its organization structure "refers to the administrative and functional structure of an agency, including the relationships of personnel through lines of authority and the distribution of responsibilities for delegated and assigned duties. This right encompasses the determination of how an agency will structure itself to accomplish its mission and functions. This determination includes such matters as the geographic locations in which an agency will provide services or otherwise conduct its operations, how various responsibilities will be distributed among the agency's organizational subdivisions, how an agency's organizational grade level structure will be designed, and how the agency will be divided into organizational entities such as sections." *NTEU Chapter 83 and Department of the Treasury, IRS,* 35 FLRA No. 53, (1990).

When there are multiple locations where the agency's work is performed, the determination of which emloyee will work at a particular location is negotiable, unless a relationship exists between job location and job duties.

To Determine Number of Employees

This is a straightforward right. Just as an agency has the right to determine its organizational structure, it also has the right to determine how many employees it needs to accomplish this task. Like many of management's retained rights, the union can propose contract language that provide certain procedures on how employees are hired and under what conditions they are promoted or disciplined. However, any proposal that seeks to dictate the number of employees within an organization or a sub-component of an organization will be found by the Authority to be outside the mandatory scope of bargaining.

Determine Internal Security

The Authority has found that:

> the term 'internal security practices' includes those policies and actions which

> are part of the Agency's plan to secure or safeguard its personnel, physical property, and operations against internal or external risks. Moreover, the Authority stated that 'the determination of the practices and policies which are necessary to the accomplishment of the security function of an agency, including the equipment to be used and the assignment of personnel, is directly related to the determination of an agency's internal security practices.'"

Providence, 32 FLRA 944, 956-57 (1988).

This means if management claims a union proposal is non-negotiable because it interferes with the right to determine internal security, at the table the union should demand that management demonstrate: 1) that it has an internal security policy and what its purpose is; and 2) how the union proposal conflicts with the internal security policy and its purpose. If the agency cannot demonstrate both points, then the union should continue to pursue the proposal and may decide to file a negotiability appeal.

7106(a)(2)(A) Rights:

Management's rights under 7106(a)(2) must be exercised "in accordance with applicable laws". While management has a right 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, these rights must be exercised in accordance with the law.

An allegation that management is violating a law when exercising these rights can be pursued as a grievance. For instance, management has the right to discipline an employee, however, such action must be taken in accordance with existing laws, rules and regulations. If it is found that the employee was improperly disciplined, then the discipline can be reduced or reversed by an arbitrator or by the Merit Systems Protection Board. A brief discussion on each of these rights is below.

To Hire
The employer has the right to hire any qualified employee. The union can not dictate that the employer hire any particular person.

To Assign
This refers to management's right to assign projects, or other work.

To Direct
Management has the right to not only *assign* a particular task, they also have the right to tell an employee how to accomplish the task.

To Layoff and Retain
The agency has the right to enact a reduction in force or to furlough employees. These rights are not unfettered and there is a myriad of regulations and laws which management must comply with. 5 CFR Part 335.

To Suspend, Remove, Reduce in Grade or Pay, or take other Disciplinary Action Against such Employees
All these actions relate to discipline. A reduction in grade or pay, a removal, and a suspension in excess of fourteen (14) days are all considered more severe disciplinary actions and are often referred to as adverse actions. Adverse actions usually can either be grieved or adjudicated by the Merit Systems Protection Board.

There are numerous contractual, regulatory and legal requirements covering nearly every aspect of how these rights are exercised covering everything from the amount of advance notice an employee has to ensuring every action by management is for just cause.

7106(a)(2)(B) Rights: To assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted

This applies to assigning work, and determining personnel by which agency operations shall be conducted.

Management invariably makes broad claims that anything involving assignment of work is non-negotiable. The truth

is many aspects of union proposals that involve work assignments are negotiable, such as shift assignment, overtime, alternative work schedules, holiday pay, rotation, use of seniority, etc.

7106(a)(2)(C) Right: To select from any appropriate source.

To select from any appropriate source – Proposals which require management to consider inside sources first are negotiable. However, management is allowed to keep its discretion in deciding the source for the ultimate selection.

7106(a)(2)(D) Right: To take necessary actions during emergencies.

By definition, in a true emergency (such as a fire, or a terrorist attack on the facility), steps may need to be taken immediately, without regard to the normal rules of bargaining. This is true in the private sector as well as in the public sector.

Development of procedures or policy that are to be followed when the agency declares an emergency are negotiable. In an actual emergency, the obligation to bargain after the emergency still exists.

a) Apparently prohibited by 7106(a), but made permissible by 7106(b)(1)

There is no law against bargaining over the number, types and grades of employees, or the methods, means and technology of performing work, even though these subjects necessarily overlap section 7106(a) subjects. However, since they are not mandatory, we are unable to have the Federal Services Impasses Panel impose language in these areas.

At the same time, if management at the Local level agrees to a proposal within subsection (b)(1), that agreement cannot be disapproved by the head of the agency even though

it otherwise clearly interferes with a subsection 7106(a) authority.

b) Procedures for implementing management rights are mandatory topics for bargaining)

Subsection (b)(2) creates a distinction between the exercise of a subsection (a) right, and the procedures used in that exercise. For example, management has a subsection (a) right to discipline employees. The union retains the right to bargain procedures to determine whether and who should be disciplined.

First, the agency must identify the subsection (a) right which allegedly is being affected. If management does this, we can argue that the agency is wrong. However, assuming our proposal would have some impact on a subsection (a) right, the next question is whether the provision itself is clearly procedural in form. If so, it is negotiable unless management can prove that the procedure would keep it from acting at all.

However, if management shows that the union's proposal is one that sets procedures by which management must act, then, to bar bargaining, management needs only to prove that the proposal would directly interfere with decision-making. It is not at all clear what "direct interference" means in this context.

c) Appropriate arrangements for employees adversely affected by the exercise of a management right are mandatory topics for bargaining

Subsection (b)(3) reserves the union's right to bargain over appropriate arrangements for employees adversely affected by the exercise of any subsection (a) management right, even if the proposal itself would otherwise violate subsection (a).

For example: ordering a reduction in force is an (a)(2)(A) management right. Selecting candidates for a vacancy from any appropriate source is an (a)(2)(C) management right. But the right to select from any appropriate source is not an impediment to bargain over a union proposal that employees laid off in a RIF be non-

competitively rehired for the first vacancies for which they qualify.

The reason is that the union proposal is an appropriate arrangement for employees injured by the reduction in force.

The starting point of a (b)(3) case is that there are employees adversely affected by the exercise of a management right. The objective of the union proposal is to avoid or reduce that injury. If that can be done without interfering with some other management right, then there is no obstacle to bargaining in the first place.

In order for there even to be a dispute, management must demonstrate that 7106(a) would bar bargaining in the absence of special circumstances. If management succeeds, then the union must demonstrate that the proposal would create an appropriate arrangement for the adversely affected employees.

Several points are obvious: if there are no adversely affected employees, (b)(3) simply cannot and does not come into play. If the proposal would not avoid or reduce the adverse impact on those employees, (b)(3) does not come into play.

Thus, the only real dispute is whether the proposal is an appropriate, in contrast to an inappropriate, arrangement; and that depends on the merits of the proposal. That is, the FLRA weighs the benefit to the employees of the proposal against the degree of interference with management's authority.

Remember that management can refuse to bargain over changes in "agency-wide" regulations and regulations of a primary national subdivision, but only if there is a compelling need for the refusal.

The regulations of activities that are not either agencies or primary national subdivisions have no bearing at all on bargaining.

VII OBTAINING INFORMATION

Employers, whether private sector or government, have data useful to unions in collective bargaining. There are two ways to obtain data from your agency.

A. Under the labor relations law

Your agency is required to provide you, free of charge, information that you need for bargaining, subject to certain exceptions. Specifically, an agency must furnish information to a union, upon request and to the extent not prohibited by law, if that information is: (1) normally maintained by the agency; (2) reasonably available; (3) necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (4) not guidance, advice, counsel or training related to collective bargaining..

Your information request should state expressly why you need the information, even though that is usually obvious. A failure to do so may lead to an unnecessary delay in receiving the information.

> You should consult the FLRA General Counsel's Information Disputes Guidance

B. Under the Freedom of Information Act

When you want to get documents from management, and there is reason to doubt that management will be cooperative, you should request the material under both the Freedom of Information Act (FOIA) and the labor relations law. There are several reasons for including the FOIA as a basis for the information request:

* the FOIA covers some documents which the agency does not have to disclose under the labor relations law ;

* the agencies take far more seriously their responsibilities under the FOIA than they do the labor relations law;

* even if a document turns out to be exempt from disclosure under the FOIA, the agency has to at least admit its existence;

* there are enforceable deadlines for compliance with FOIA requests.

The biggest drawback to using the FOIA is that under certain circumstances you can be charged for search time and for duplication. Some managers may find an irresistible temptation to discourage use of the FOIA by threatening improper charges. The sample letter contains language to protect against this. The letter should be addressed to whomever you normally send document requests.

Dear [ ]:

This is to request the following information pursuant to the Freedom of Information Act and 5 U.S.C. 7114(b)(4):

[Describe, as clearly as you can, the information or documents being sought. You should also clearly state how the information relates to carrying out your representation function . Consult the FLRA General Counsel's 1996 memorandum on this subject. www.flra.gov/gc/inf_guid.html].

Because one of the reasons the information is being requested is to contribute to public understanding of the operation or activities of the agency, we request that any fees assessable under the FOIA be waived. If the agency intends to charge any fees, please provide an estimate prior to any being incurred.

You are reminded that you must respond to the FOIA portion of this request within ten working days. If you are not the proper person to respond to the FOIA portion of this request, please forward it to that person.

Sincerely,

Alternatively, you can send two separate letters, one under the FOIA and one under the labor relations law:

Dear [ ]: This is to request the following information pursuant to 5 U.S.C. 7114(b)(4): [Describe, as clearly as you can, the information or documents being sought. You should also clearly state how the information relates to carrying out your representation function. Consult the FLRA General Counsel's 1996 memorandum on this subject. www.flra.gov/gc/inf_guid.html]. Sincerely,	Dear [ ]: This is to request the following information pursuant to the Freedom of Information Act: [Describe, as clearly as you can, the information or documents being sought.] Because one of the reasons the information is being requested is to contribute to public understanding of the operation or activities of the agency, we request that any fees assessable under the FOIA be waived. If the agency intends to charge any fees, please provide an estimate prior to any being incurred. You are reminded that you must respond to this request within ten working days. If you are not the proper person to respond to this request, please forward it to that person. Sincerely,

Two additional points should be kept in mind. First, if a document is releasable under both the FOIA and the labor relations law, and the agency wants to charge you under the

FOIA, tell it you'll take it instead under the labor relations law. Second, the agency might admit the existence of a particular document but claim it is exempt from disclosure under the FOIA, but might still have to disclose it under the labor relations law. In either event, the main benefits to using the FOIA are: it forces management to admit the existence of documents which management might deny existed if the request were made under the labor law only; and the union does not have to limit its request by excluding documents that constitute internal management guidance on labor relations matters.

VIII PARTNERSHIP, PRE-DECISIONAL INVOLVEMENT, AND WORK GROUPS

A. PARTNERSHIP

Partnership and collective bargaining are not mutually exclusive concepts. On the contrary, the fact that an agreement was reached in a partnership forum does not somehow make it something other than an enforceable collective bargaining agreement.

There is no particular format required for collective bargaining. The fact that a method other than traditional adversary negotiations is used does not keep a partnership solution from being just as binding as any other collectively bargained agreement.

To avoid disputes, the union and management should expressly discuss at the outset whether the solution they reach in partnership will be a binding agreement or whether, instead, the parties will then have to engage in some other kind of bargaining in order to reach a binding agreement.

Consult "AFGE Guide to Labor-Management Partnership"

A phony partnership is worse than no partnership at all. In a real partnership, the partnership council will either make binding decisions or will make recommendations to the union and management both. A phony partnership gives management final, unilateral decision-making authority on matters that should be bargained.

B. BARGAINING IS PRE-DECISIONAL INVOLVEMENT

Some managers offer the union "pre-decisional involvement," often shortened to "PDI", as an alternative to bargaining. The suggestion is that by offering PDI to the union regarding a management-initiated change, management avoids the need to bargain.

Actually, collective bargaining itself (or "negotiating") is a perfect example of pre-decisional involvement. The result of the bargaining is a decision—the language in the contract—that the parties make jointly. If management wants, for example, a procedure for filling vacancies through merit selection, the parties meet, reach an agreement (or have an agreement imposed on them by the Federal Service Impasses Panel), and thus decide what the procedure should be. This pre-decisional involvement by the employees through their union is in stark contrast to the normal process in a non-union environment, where management unilaterally develops the selection procedure, announces it, and then allows employees to comment.

Congress has determined, by law, that pre-decisional involvement of employees through collective bargaining is in the public interest:

> "the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them . . . safeguards the public interest [and] contributes to the effective conduct of public business . . . " 5 U.S.C. § 7101(a).

At the same time, we recognize that many individual issues do not warrant highly formalized bargaining. The important thing is that the parties sit down together, make a good-faith effort to reach agreement, and comply with any agreement that is reached. It does not matter if management insists on calling this informal process "pre-decisional involvement" rather than bargaining or negotiations.

The FLRA General Counsel's Pre-Decisional Involvement Guidance is generally informative, although it tends to contrast "pre-decisional involvement" with "collective bargaining," rather than recognizing that the latter is simply the statutorily preferred method of obtaining the former.

What has been called pre-decisional involvement has often occurred as a prelude to a reorganization. Management wants employees to participate in deciding how a particular office should be staffed, and what changes in technology

should be adopted. It makes more sense to have employee participation prior to making the decision rather than afterwards. Management does not have the right, however, to unilaterally determine the mode of the employee involvement.

Note, moreover, that pre-decisional involvement on issues concerning a possible reorganization can be initiated by the union. There is no need to wait for management to decide it would benefit from that type of employee participation.

The perfect model of pre-decisional involvement is collective bargaining. Accept no substitutes.

The result of bargaining, whether or not called pre-decisional involvement, is a signed, written agreement that can be enforced by a neutral third party. If you do not insist on clear written agreements, you may be waiving the union's right to actually bargain.

C. WORKGROUPS

Management sometimes appoints bargaining unit employees to workgroups or task forces in such areas as EEO, reorganizations, training, awards, and efficiency improvement. Sometimes management claims that this meets its obligation to bargain with the union over those subjects. That simply is not true. Unless the union and management have clearly authorized the members of the workgroup to reach an agreement binding on both parties, then the most the workgroup can do is make recommendations. Those recommendations can be considered by the union and management, but are not a substitute for actual bargaining.

You should consult the FLRA General Counsel's Work Groups Guidance

IX PRIVATE SECTOR COLLECTIVE BARGAINING

While the vast majority of AFGE bargaining units are in the federal and the District of Columbia sector, AFGE does, in fact, represent and bargain on behalf of private sector workers. While the basic techniques regarding how to bargain remain virtually the same between federal and private sector workers, there are important legal distinctions governing private sector bargaining.

Earlier chapters in this guide explained the role of the FLRA and the FSIP, which govern federal labor management relations. Private sector labor law, however, is governed by the National Labor Relations Board, which administers the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers. The Act implements the national labor policy of assuring free choice and encouraging collective bargaining as a means of maintaining industrial peace. Through the years, Congress has amended the Act and the Board and courts have developed a body of law drawn from it,

A. WHAT DOES THE NLRB DO?

In its statutory assignment, the NLRB has two principal functions: (1) to determine, through secret-ballot elections, the free democratic choice by employees whether they wish to be represented by a union in dealing with their employers and if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions. The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections that are filed with the NLRB in one of its 52 Regional, Subregional, or Resident Offices.

B. How Are Unfair Labor Practice Cases Processed?

When an unfair labor practice charge is filed, the appropriate field office conducts an investigation to determine whether there is reasonable cause to believe the Act has been violated. If the Regional Director determines that the charge lacks merit, it will be dismissed unless the charging party decides to withdraw the charge. A dismissal may be appealed to the General Counsel's office in Washington, DC.

If the Regional Director finds reasonable cause to believe a violation of the law has been committed, the region seeks a voluntary settlement to remedy the alleged violations. If these settlement efforts fail, a formal complaint is issued and the case goes to hearing before an NLRB Administrative Law Judge. The judge issues a written decision that may be appealed to the five-Member Board in Washington for a final agency determination. The Board's decision is subject to review in a U.S. Court of Appeals. Depending upon the nature of the case, the General Counsel's goal is to complete investigations and, where further proceedings are warranted, issue complaints if settlement is not reached within 7 to 15 weeks from the filing of the charge. Of the total charges filed each year, about 35,000, approximately one-third are found to have merit of which over 90% are settled.

C. Injunctions against Unfair Labor Practices

Section 10(j) of the National Labor Relations Act empowers the NLRB to petition a federal district court for an injunction to temporarily prevent unfair labor practices by employers or unions and to restore the status quo, pending the full review of the case by the Board. In enacting this provision, Congress was concerned that delays inherent in the administrative processing of unfair labor practice charges, in certain instances, would frustrate the Act's remedial objectives. In determining whether the use of Section 10(j) is appropriate in a particular case, the principal question is whether injunctive relief is necessary to preserve the Board's ability to effectively remedy the unfair labor practice alleged, and whether the

alleged violator would otherwise reap the benefits of its violation.

Under NLRB procedures, after deciding to issue an unfair labor practice complaint, the General Counsel may request authorization from the Board to seek injunctive relief. The Board votes on the General Counsel's request and, if a majority votes to authorize injunctive proceedings, the General Counsel, through his Regional staff, files the case with an appropriate Federal district court.

In addition, Section 10(l) of the Act *requires* the Board to seek a temporary federal court injunction against certain forms of union misconduct, principally involving "secondary boycotts" and "recognitional picketing." Finally, under Section 10(e), the Board may ask a federal court of appeals to enjoin conduct that the Board has found to be unlawful.

D. Collective Bargaining under the NLRA

Collective bargaining is one of the keystones of the Act. Section 1 of the Act declares that the policy of the United States is to be carried out "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

Collective bargaining is defined in the Act. Section 8(d) requires an employer and the representative of its employees to meet at reasonable times, to confer in good faith about certain matters, and to put into writing any agreement reached if requested by either party. The parties must confer in good faith with respect to wages, hours, and other terms or conditions of employment, the negotiation of an agreement, or any question arising under an agreement.

These obligations are imposed equally on the employer and the representative of its employees. It is an unfair labor practice for either party to refuse to bargain collectively with the other. The obligation does not, however, compel

either party to agree to a proposal by the other, nor does it require either party to make a concession to the other.

Section 8(d) provides further that when a collective-bargaining agreement is in effect no party to the contract shall end or change the contract unless the party wishing to end or change it takes the following steps:

1. The party must notify the other party to the contract in writing about the proposed termination or modification 60 days before the date on which the contract is scheduled to expire. If the contract is not scheduled to expire on any particular date, the notice in writing must be served 60 days before the time when it is proposed that the termination or modification take effect.

2. The party must offer to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed changes.

3. The party must, within 30 days after the notice to the party, notify the Federal Mediation and Conciliation Service of the existence of a dispute if no agreement has been reached by that time. Said party must also notify at the same time any State or Territorial mediation or conciliation agency in the State or Territory where the dispute occurred.

4. The party must continue in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract until 60 days after the notice to the other party was given or until the date the contract is scheduled to expire, whichever is later.

1. Required Subjects of Bargaining

The duty to bargain covers all matters concerning rates of pay, wages, hours of employment, or other conditions of employment. These are called "mandatory" subjects of bargaining about which the employer, as well as the employees' representative, must bargain in good faith, although the law does not require "either party to agree to

a proposal or require the making of a concession." In addition to wages and hours of work, these mandatory subjects of bargaining include but are not limited to such matters as pensions for present employees, bonuses, group insurance, grievance procedures, safety practices, seniority, procedures for discharge, layoff, recall, or discipline, and union security. Certain managerial decisions such as subcontracting, relocation, and other operational changes may not be mandatory subjects of bargaining, even though they affect employees' job security and working conditions. The issue of whether these decisions are mandatory subjects of bargaining depends on the employer's reasons for taking action. Even if the employer is not required to bargain about the decision itself, it must bargain about the decision's effects on unit employees. On "nonmandatory" subjects, that is, matters that are lawful but not related to "wages, hours, and other conditions of employment," the parties are free to bargain and to agree, but neither party may insist on bargaining on such subjects over the objection of the other party.

2. Duty to Bargain Defined

An employer who is required to bargain under this section must, as stated in Section 8(d), "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party."

3. What Constitutes a Violation of the Duty to Bargain

An employer, therefore, will be found to have violated Section 8(a)(5) if its conduct in bargaining, viewed in its entirety, indicates that the employer did not negotiate with a good-faith intention to reach agreement. However, the employer's good faith is not at issue when its conduct constitutes an out-and-out refusal to bargain on a mandatory subject. For example, it is a violation for an employer, regardless of good faith, to refuse to bargain

about a subject that it believes is not a mandatory subject of bargaining, when in fact it is.

4. Duty to Supply Information

The employer's duty to bargain includes the duty to supply, on request, information that is "relevant and necessary" to allow the employees' representative to bargain intelligently and effectively with respect to wages, hours, and other conditions of employment.

Note to union negotiators: Prior to negotiations, the labor negotiators should request, in writing, from the designated management representative the following information.

1. Aggregate base salaries for a calendar year for all employees in the bargaining unit.

2. Aggregate cost of the employer's contributions for health and welfare, optical, and dental.

3. Aggregate cost of the employer's contributions for pension, and 401(k), if applicable.

4. Copies of all health and welfare and pension documents.

E. Unfair Labor Practices (Employers)

Section 8(a)(1) forbids an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." Any prohibited interference by an employer with the rights of employees to organize, to form, join, or assist a labor organization, to bargain collectively, to engage in other concerted activities for mutual aid or protection, or to refrain from any or all of these activities, constitutes a violation of this section. This is a broad prohibition on employer interference, and an employer violates this section whenever it commits any of the other employer unfair labor practices. In consequence, whenever a violation of Section 8(a) (2), (3), (4), or (5) is committed a violation of Section 8(a)(1) is

also found. This is called a "derivative violation" of Section 8(a)(1).

Examples of employer unfair labor practices include:

- Threatening employees with loss of jobs or benefits if they join or vote for a union or engage in protected concerted activity.

- Threatening to close the plant if employees select a union to represent them.

- Questioning employees about their union sympathies or activities in circumstances that tend to interfere with, restrain or coerce employees in the exercise of their rights under the Act.

- Promising benefits to employees to discourage their union support.

- Transferring, laying off, terminating or assigning employees more difficult work tasks because they engaged in union or protected concerted activity.

- Spying on union gatherings or pretending to spy.

F. Unfair Labor Practices (Unions)

Section 8(b)(1)(A) forbids a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed in section 7." The section also provides that it is not intended to "impair the rights of a labor organization to prescribe its own rules" concerning membership in the labor organization.

Unlawful coercion may consist of acts specifically directed at an employee such as physical assaults, threats of violence, and threats to affect an employee's job status. Coercion also includes other forms of pressure against employees such as acts of a union while representing employees as their exclusive bargaining agent. A union that is a statutory bargaining representative owes a duty of fair representation to all the employees it represents. It may exercise a wide range of reasonable discretion in

carrying out the representative function, but it violates Section 8(b)(1)(A) if, while acting as the employees' statutory bargaining representative, it takes or withholds action in connection with their employment because of their union activities or for any irrelevant or arbitrary reason such as an employee's race or sex.

Some examples of union unfair labor practices are:

- Threats to employees that they will lose their jobs unless they support the union's activities.
- Refusing to process a grievance because an employee has criticized union officers.
- Fining employees who have validly resigned from the union for engaging in protected activity following their resignation.
- Seeking the discharge of an employee for not complying with a union shop agreement, when the employee has paid or offered to pay a lawful initiation fee and periodic dues.
- Refusing referral or giving preference in a hiring hall on the basis of race or union activities.
- Fining or expelling members for filing unfair labor practice charges with the Board or for participating in an investigation conducted by the Board.

G. The Right to Strike

Section 7 of the Act states in part, "Employees shall have the right . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Strikes are included among the concerted activities protected for employees by this section. Section 13 also concerns the right to strike. It reads as follows:

> Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

1. Lawful and Unlawful Strikes

The lawfulness of a strike may depend on the object, or purpose, of the strike, on its timing, or on the conduct of the strikers. The object, or objects, of a strike and whether the objects are lawful are matters that are not always easy to determine. Such issues often have to be decided by the National Labor Relations Board. The consequences can be severe to striking employees and struck employers, involving as they do questions of reinstatement and backpay.

Employees who strike for a lawful object fall into two classes, "economic strikers" and "unfair labor practice strikers." Both classes continue as employees, but unfair labor practice strikers have greater rights of reinstatement to their jobs.

2. The Definition of Economic Strikes

If the object of a strike is to obtain from the employer some economic concession such as higher wages, shorter hours, or better working conditions, the striking employees are called economic strikers. They retain their status as employees and cannot be discharged, but they can be replaced by their employer. If the employer has hired bona fide permanent replacements who are filling the jobs of the economic strikers when the strikers apply unconditionally to go back to work, the strikers are not entitled to reinstatement at that time. However, if the strikers do not obtain regular and substantially equivalent employment, they are entitled to be recalled to jobs for which they are qualified when openings in such jobs occur if they, or their bargaining representative, have made an unconditional request for their reinstatement.

3. The Definition of Unfair Labor Practice Strikes

Employees who strike to protest an unfair labor practice committed by their employer are called unfair labor practice strikers. Such strikers can be neither discharged nor permanently replaced. When the strike ends, unfair labor practice strikers, absent serious misconduct on their part, are entitled to have their jobs back even if employees hired to do their work have to be discharged.

If the Board finds that economic strikers or unfair labor practice strikers who have made an unconditional request for reinstatement have been unlawfully denied reinstatement by their employer, the Board may award such strikers backpay starting at the time they should have been reinstated.

4. Strikes Unlawful Because of Misconduct of Strikers

Strikers who engage in serious misconduct in the course of a strike may be refused reinstatement to their former jobs. This applies to both economic strikers and unfair labor practice strikers. Serious misconduct has been held to include, among other things, violence and threats of violence. The U.S. Supreme Court has ruled that a "sitdown" strike, when employees simply stay in the plant and refuse to work, thus depriving the owner of property, is not protected by the law. Examples of serious misconduct that could cause the employees involved to lose their right to reinstatement are:

- Strikers physically blocking persons from entering or leaving a struck plant.
- Strikers threatening violence against nonstriking employees.
- Strikers attacking management representatives.

H. Sources of Information Regarding Private Sector Employers

The Securities and Exchange Commission has responsibility to protect investors and maintain the integrity of the securities markets. All publicly held companies are required to file extensive financial reports with the SEC. The Division of Corporation Finance oversees corporate disclosure of important financial information to the public. This information is quite valuable to union negotiators in preparing for private sector negotiations. The Division of Corporation Finance reviews documents that publicly held companies are required to file with the Commission. The documents include:

- registration statements for newly offered securities;
- annual and quarterly filings (Forms 10-K and 10-Q);
- proxy materials sent to shareholders before an annual meeting;
- annual reports to shareholders;
- documents concerning tender offers (a tender offer is an offer to buy a large number of shares of a corporation, usually at a premium above the current market price); and
- filings related to mergers and acquisitions.

Other Sources of Information

It is common for private sector companies to have collective bargaining agreements with multiple unions. Therefore, prior to negotiations it is useful to check with other AFL-CIO affiliates to determine if any affiliate has an existing collective bargaining agreement with a specific employer. All affiliates should willingly provide AFGE with copies of these collective bargaining agreements.

X FILING COMPLAINTS AND APPEALS

A. FILING NEGOTIABILITY APPEALS

If management says that a union proposal is non-negotiable, and it does not accompany that statement with a good faith effort to find a mutually acceptable substitute for the union proposal, you can immediately initiate the negotiability appeals procedure. Hand management a memo with the subject, "request for negotiability allegations". Make sure it has a date, the name of the management chief negotiator, and the name and signature of the union chief negotiator. The substance of the memo reads:

> Pursuant to 5 C.F.R. § 2424.11, we hereby request a written allegation that the duty to bargain does not extend to the attached proposal.

Attach the proposal. Make a couple of copies and hand the original to the management chief negotiator. Move on to the next proposal on the agenda.

If you wish the national AFGE to write the negotiability brief, you need to send it a copy of the form and follow up with a phone call.

Management has three choices: within ten days, it must either provide a written allegation that the proposal is non-negotiable; or within that time limit it must state in writing that it concedes that the proposal is negotiable; or it can fail to act within ten days.

As soon as you receive a written allegation, or on the eleventh day after requesting and not receiving one, you file a negotiability appeal with the FLRA. It is most convenient to use FLRA Form 208, which can be downloaded from the FLRA website. Although the form is lengthy, most of the questions are simple. Paragraph 10 of the form asks for the wording of the proposal. It is safest to simply

attach a copy of the actual proposal. Paragraphs 11 and 12 ask for information needed to understand the proposal, such as the meaning of technical language or special terms or phrases that may be limited to your agency. You should respond to these requests in good faith, but do not spend a great deal of time doing so. The most important things are to file on time and without getting distracted from actual bargaining.

The most difficult part of the process is filing and serving the petition. You must serve both the management chief negotiator and the head of the entire agency . For example, in the defense department, the Secretary of Defense must be served. One copy of the package should be handed to the management chief negotiator. Another copy should sent to the head of the agency by certified mail (so there will be a receipt). The FLRA form has a statement of service sheet that must be filled out and submitted with the package to the FLRA.

Send an original and four copies of the package to FLRA headquarters.

What happens next? Management has exactly 30 days from when the agency head receives a copy of our petition to file its entire statement of position. That is a lot of work, which can be avoided by management if it suddenly finds some alternative contract language that is acceptable to you.

If management does file, we have 15 days from receipt of a copy of the management brief to file our response. It is essential, therefore, that the AFGE district office (in the case of local negotiations) or the OLMR (in the case of council negotiations) be consulted in advance, so they can be ready, if necessary, to help prepare the union's position.

Of course, depending on the issue, you might wish to simply drop the proposal, after management has done all of its work. Or you might see a way to modify the proposal to meet management 's legalistic objections. In either case,

simply notify the FLRA if you want you withdraw your appeal.

B. FILING UNFAIR LABOR PRACTICE CHARGES

One response to management's refusal to bargain in good faith is to file an Unfair Labor Practice charge with the Federal Labor Relations Authority. Where management claims it has been bargaining in good faith, the FLRA must decide, based on the totality of the circumstances, whether management is telling the truth or not. Stated otherwise, circumstantial evidence of bad faith bargaining must be clear enough to prove that management's claims are a sham. Unfortunately, in many cases management successfully defends itself with a credible claim of incompetence: for example, delay in providing counter-proposals is justified by management's need to consult experts. But even if the union wins the unfair labor practice claim, reliance on that procedure to get management to start bargaining properly can mean accepting two years or more of non-bargaining while the litigation continues.

The primary drawback to relying on the FLRA to enforce your bargaining rights is that it lets management decide whether there will be bargaining and how long the bargaining will take.

Concentrating on whether you can succeed on an unfair labor practice charge distracts you from the objective of actually getting improved working conditions as quickly as possible.

This printing of the manual reflects changes through 7/12/02. Check the OLMR portion of the AFGE website to ensure that this is the most recent version.