

**MEMORANDUM OF UNDERSTANDING
CONCERNING UNION SUCCESSORSHIP**

between

USDA, FARM AND FOREIGN AGRICULTURAL SERVICE

CONSOLIDATED FARM SERVICE AGENCY

IN THE STATE OF COLORADO

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 3499

SECTION I. AGREEMENT

The undersigned hereby agree, in accordance with the provisions of the Federal Crop Insurance and Department of Agriculture Reorganization Act of 1994 (Act), that successorship should be granted to AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 3499 for the bargaining unit described in Section III of this agreement. We jointly seek certification of this unit and exclusive representative from the Federal Labor Relations Authority (FLRA) under the provisions of the Act and the Federal Labor Management Relations Statute (Statute).

SECTION II. EXISTING AFFECTED UNITS

On February 26, 1974, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 3499 was certified as the exclusive representative for the following unit:

INCLUDED: All nonsupervisory professional and nonprofessional employees, full time, part time and temporary employees expected to be employed over 90 days, within the State of COLORADO under the direction of the State Director, Farmers Home Administration.

EXCLUDED: Management officials, employees engaged in Federal Personnel work in other than a purely clerical capacity, supervisors, and guards as defined in Executive Order 11491, as amended. [Case 61-2253-RO]

SECTION III. SUCCESSOR UNIT

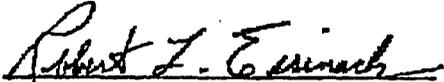
A bargaining unit will be created for all eligible employees of the Consolidated Farm Service Agency in the state of COLORADO and will be described as follows

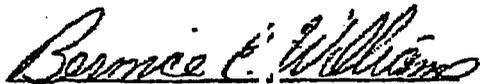
All professional and non-professional employees employed by the United States Department of Agriculture, Consolidated Farm Service Agency in the State of COLORADO, excluding all employees of the Risk Management Regional Service Office or the Risk Management Compliance Office, professional employees, management officials, supervisors, and employees described in Title 5, U.S.C. 7112(b)(2),(3),(4),(6) and (7).

SECTION IV. EXCLUSIVE REPRESENTATIVE

The exclusive representative for the unit described will be AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 3499.

Agreed on this 5th day of December, 1995.


CFSA


AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
LOCAL 3499

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY
DENVER REGION

U. S. DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY
STATE OF COLORADO
Activity/Petitioner

-AND-

Case No. DE-AC-60020

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3499
Labor Organization

**DECISION AND ORDER ON REQUEST FOR
CERTIFICATION OF VOLUNTARY AGREEMENT**

This case is before the undersigned Regional Director of the Federal Labor Relations Authority (Authority) on a request filed by the Department of Agriculture (the Agency) pursuant to section 291 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (the Act).¹ The Act provides successorship provisions relating to existing bargaining units that were certified under Chapter 71 of Title 5, United States Code, and that were affected by changes resulting from the exercise of the Secretary of Agriculture's authority under the Act. The Agency requests that the Authority certify the parties' agreement on a new appropriate unit created as a result of the Secretary's exercise of authority under the Act and the parties' agreement on the exclusive representative for such unit.

The American Federation of Government Employees, Local 3499 (AFGE), was initially certified as the exclusive representative of the following unit of certain employees of the Farmers Home Administration (FmHA), located in Colorado on February 26, 1974, in Executive Order Case No. 61-2253(RO):

Included: All nonsupervisory professional and nonprofessional employees, full time, part time and temporary employees expected to be employed over 90 days, within the State of Colorado under the direction of the State Director, Farmers Home Administration.

Excluded: Management officials, employees engaged in Federal Personnel work in other than a purely clerical capacity, supervisors and guards as defined in Executive Order 11491, as amended.

This AFGE unit included a total of approximately 158 professional and nonprofessional FmHA employees located at various sites in Colorado.

¹ On November 28, 1994, Regional Directors who are directed and supervised by the General Counsel, as provided in section III of the Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the Federal Labor Relations Authority, Appendix B to 5 CFR Chapter XIV, were delegated the authority to certify, subject to section 291(b)(2)(A) of the Act, the terms of voluntary agreements entered into pursuant to section 291(a) of the Act. 59 Fed. Reg. 61615-61616 (December 1, 1994)

As signed by President Clinton on October 13, 1994, the Act provided, among other things, for the creation within the Agency of the Farm and Foreign Agricultural Service (FFAS), which consists of the Farm Service Agency (FSA) and the Foreign Agricultural Service (FAS). The newly created FSA is comprised of, among others, some or all of the employees who were previously assigned to FmHA, the Agriculture Stabilization and Conservation Service (ASCS), and the Federal Crop Insurance Corporation (FCIC), which have been abolished. The mission of FSA is to ensure a healthy and abundant supply of food and fiber while conserving our nation's land, water, and wildlife and to deliver services to customers efficiently in order to protect the economic security of American farmers. In connection with the abolishment of the FmHA, the Act further provided for creation of the Rural Housing and Community Development Service (RHCDS) within the mission area of the Rural Economic and Community Development (RECD). As a result of the reorganization, RHCDS combined the housing programs of FmHA and the rural community loan programs previously administered by the Rural Development Authority (RDA) and the Rural Electrification Administration (REA).

In Colorado, the creation of FSA has resulted in the transfer to FSA of 17 bargaining unit employees from the AFGE's FmHA unit² and 7 previously unrepresented bargaining unit eligible employees who were formally employed by the ASCS Colorado State Office. On December 5, 1995, consistent with section 291 of the Act, "Successorship Provisions Relating to Bargaining Units and Exclusive Representatives,"³ the affected parties, the Agency and AFGE, reached voluntary agreement on a new FSA bargaining unit encompassing the aforementioned 17 former FmHA employees represented by AFGE, as well as the above-noted 7 previously unrepresented former ASCS employees, and signed a Memorandum of Understanding (MOU) which provides that AFGE is the exclusive representative of a bargaining unit of FSA employees described as follows:

All professional and non-professional employees of the U.S. Department of Agriculture, Farm Service Agency, in the State of Colorado, excluding all employees of the Risk Management Regional Service Office or the Risk Management Compliance Office, management officials, supervisors, and employees described in 5 U.S.C. 7112(b)(2), (3), (4), (6) and (7).

As reflected above, the majority of the employees who would be included in this new bargaining unit provided for in the MOU had previously been included in the AFGE's FmHA unit; these employees, like the previously unrepresented former ASCS employees who would be included in this same unit, continue to spend the majority of their time engaged in functions similar to those which they performed while FmHA employees. Moreover, no other labor organizations previously represented any of the employees encompassed by the Agency's request. A copy of the MOU is

² The remainder of the employees included in AFGE's FmHA unit, who are not at issue in this case, are now assigned to RECD.

³ Section 291 of the Act provides in relevant part:

(a) VOLUNTARY AGREEMENT-

(1) IN GENERAL—If the exercise of the Secretary [of Agriculture's] authority under this title results in changes to an existing bargaining unit that has been certified under chapter 71 of Title 5, United States Code, the affected parties shall attempt to reach a voluntary agreement on a new bargaining unit and an exclusive representative for such unit.

attached as Appendix A.⁴

The parties agree that AFGE is the exclusive representative of the proposed bargaining unit of FSA employees in the State of Colorado⁵; the AFGE's FSA unit consists of approximately 24 employees, the majority of whom were represented by AFGE at FmHA.

Based on the forgoing, I find that the terms of the parties' December 5, 1995 agreement concerning the proposed bargaining unit may be certified as requested. In reaching this conclusion, I note particularly the voluntary agreement of the Agency to recognize AFGE as the exclusive representative of the proposed bargaining unit of FSA employees in the State of Colorado. I further note the absence of any evidence to indicate either that the criteria set forth in section 291(a)(2) of the Act have not been met or that a valid election has been conducted involving the employees in the unit proposed for certification.

In accordance with section 291(b)(3)(B) of the Act, any action taken by a Regional Director pursuant to the delegation in section 291(b)(3)(A) shall be subject to review under the provisions of section 7105(f) of Title 5, United States Code, in the same manner as if such action had been taken under section 7105(e) of such title, except that in the case of a decision not to certify, such review shall be required if application therefor is filed by an affected party within the time specified in such provisions.

Having found that the voluntary agreement to certify the proposed unit herein may be granted, as requested, pursuant to the delegation, the parties are hereby advised:

Decisions of the Regional Director made pursuant to this delegation of authority become the final and binding action of the Authority:

(1) If no affected party, as defined in section 291(c) of the Act, files an application for review of the Regional Director's Decision and Order with the Authority within sixty (60) days after the issuance of the Regional Director's Decision and Order; or

(2) If the Authority does not undertake to grant review of the Regional Director's Decision and Order to certify within sixty (60) days after the filing of a timely application for review.

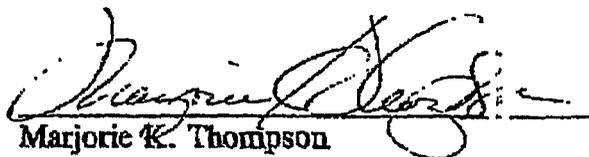
Pursuant to section 291(b)(3)(B) of the Act, review shall automatically be granted upon the timely application for review by an "affected party" of any decision not to certify. All other applications for review of Decisions and Orders of a Regional Director shall be filed and processed in

⁴ An inadvertent error in the text of the MOU both included and excluded professional employees from the proposed unit requested in this case. Both parties submitted correspondence to the Region confirming their intent to include professional employees in the proposed unit described in the MOU. Accordingly, I have included this correspondence, together with the MOU, in Appendix A.

⁵ The Risk Management employees excluded from the proposed unit are under the overall supervision of the Deputy Administrator for Risk Management; as such, they follow a different chain of command, have distinct functional responsibilities and are assigned to different locations from the other FSA employees in the State of Colorado. They were unrepresented in their former USDA activity, FCIC.

accordance with 5 CFR 2224.17.

The Authority's granting of review upon the timely filing of an application for review of a Regional Director's Decision and Order will not operate as a stay of such action ordered by the Regional Director, unless specifically ordered by the Authority. If the Authority grants review, the Authority may affirm, modify, or reverse any action reviewed.



Marjorie K. Thompson
Regional Director
Federal Labor Relations Authority
Denver Region
1244 Speer Boulevard, Suite 100
Denver, CO 80204
Telephone: (303) 844-5226

Dated: March 28, 1996

Attachment: Service Sheet



United States
Department of
Agriculture

Workers Home
Administration

Denver,
Colorado

Effective Date:
June 12, 1981

Labor-Management Agreement

American Federation of
Federal Employees
Local 3499

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LABOR-MANAGEMENT RELATIONS AGREEMENT
BETWEEN
FARMERS HOME ADMINISTRATION
U.S. DEPARTMENT OF AGRICULTURE
COLORADO
AND
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
(AFL-CIO) LOCAL 3499

PREAMBLE

This Agreement is made pursuant to Title VII of Public Law 95-454 known as the Civil Service Reform Act of 1978. The following articles of this agreement, together with any agreed to at a later date, constitute the agreement by and between the Farmers Home Administration - United States Department of Agriculture, serving the State of Colorado hereinafter referred to as the "EMPLOYER" and the American Federation of Government Employees (AFL-CIO) Local 3499, hereinafter referred to as the "UNION", for the employees in the unit described below hereinafter referred to as the "EMPLOYEES".

WITNESSETH

In consideration of the mutual covenants herein set forth, the parties bound hereby agree as follows:

Whereas, it is the intent and purpose of the parties hereto to promote and improve the effectiveness and efficiency of the Farmers Home Administration,

Whereas, the parties hereto desire to facilitate and encourage the amicable settlement of disputes between the Employer and Employee involving conditions of employment,

Whereas, the public interest demands the highest standards of employee performance, and in consonance with Public Law 95-454 which states in effect that Unions are in the Public Interest,

Whereas, the Union is the exclusive representative of all employees in the Unit,

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 - DEFINITION OF BARGAINING UNIT

1.1 The Unit to which this Agreement is applicable is composed as follows:

Includes: All nonsupervisory professional and nonprofessional employees, full time, part time and temporary employees expected to be employed over 90 days, within the State of Colorado under the direction of the State Director, Farmers Home Administration.

Excludes: Management officials, employees engaged in Federal Personnel work in other than a purely clerical capacity, supervisors and guards as defined in Public Law 95-454.

1.2 DEFINITIONS: The following definitions of terms used in this Agreement shall apply:

- (a) AGENCY: As used in this Agreement, "Agency" is defined as the Farmers Home Administration, U.S. Department of Agriculture.
- (b) CONSULTATION: Verbal discussion or written communication between representatives of the Employer and representatives of the Union for the purpose of obtaining each others views on matters of appropriate concern to employees in the representation unit.
- (c) EMERGENCY SITUATIONS: An "Emergency Situation" is one which poses sudden immediate and unforeseen work requirements for the Employer or the Agency as a result of natural phenomena or other circumstances beyond the Employer's or the Agency's control or ability to anticipate and which is not expected to be of a recurring nature.
- (d) EMPLOYEES: Employees of the Unit described in Article I.1.
- (e) EMPLOYER: The Farmers Home Administration, U.S. Department of Agriculture, Denver, Colorado, hereinafter referred to as the "Employer".
- (f) IMPASSE: The state of inability of the representatives of the Employer and the Union to arrive at a mutually agreeable position, concerning negotiable matters, through the bargaining process.
- (g) MANAGEMENT OFFICIAL: An individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Agency.
- (h) NEGOTIATION: Bargaining by representatives of the Employer and representatives of the Union on appropriate issues with a view of arriving at a mutually acceptable position.

- (i) SUPERVISOR: An individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.
- (j) UNION: The American Federation of Government Employees, Local 3499, (AFL-CIO) hereinafter referred to as the "Union".
- (k) UNION OFFICIAL: An elected officer or appointed Union steward.

ARTICLE 2 - CONSULTATION AND NEGOTIATION

2.1 Matters appropriate for consultation and negotiation between the parties are policies, programs, and procedures related to working conditions within the Unit which are within the discretion of the Employer. Prior to any change in policy, the Union and Employer shall consult or negotiate on the matter as appropriate.

ARTICLE 3 - EMPLOYEE RIGHTS

3.1 UNION MEMBERSHIP: Employees in the unit shall be protected in the exercise of their right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization, or to refrain from such activity. This agreement does not prevent any employee, regardless of union membership, from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable laws, regulations, or agency policies, or from choosing his or her own representative in a statutory appeal action.

Nothing in this agreement shall abrogate any employee right or require an employee to become or to remain a member of a labor organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions. The Employee shall not be disciplined or otherwise discriminated against because he or she has filed a complaint or given testimony under the Civil Service Reform Act, the grievance procedure, or any other available procedure for redressing wrongs to an employee.

3.2 NONDISCRIMINATION: No employee shall be discriminated against by either the Employer or the Union because of race, color, creed, religion, sex, national origin, age, marital status, physical handicap or lawful political affiliation.

ARTICLE 4 - RIGHTS OF THE EMPLOYER

4.1 Section 7106 of Public Law 95-454 states as follows:

"(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."

ARTICLE 5 - UNION AND EMPLOYEE REPRESENTATIVES

5.1 The Employer will recognize the chief steward and a reasonable number of stewards to be designated in writing by the Union not to exceed five (5) stewards.

Each steward shall normally represent all Employees regularly assigned to the district in which the steward is employed and may receive their complaints or grievances during duty hours.

5.2 The Employer will recognize the officers and duly accredited representatives of the Union and shall be kept advised in writing by the Union of the names and titles of its officers and representatives.

5.3 The Union shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the Unit.

5.4 When the Union is designated as the representative by an employee in any complaint, grievance, adverse action, or allegation of discrimination, management will address all correspondence to the employee with a copy to the designated Union representative, if requested by the employee in writing.

ARTICLE 6 - UNION PARTICIPATION ON COMMITTEES

6.1 The Union may have two representatives and an alternate on the following committees:

- (a) Equal Employment Opportunity
- (b) Employer-Union Cooperation Committee

6.2 As concerns the Employer-Union Cooperation Committee, representatives of the Union and the Employer will meet quarterly when requested by either party. The meetings will have as their purpose and shall give consideration to matters relating to personnel policies and practices, working conditions of the employees in the Unit and questions concerning implementation or application of this Agreement and Public Law 95-454. If mutually agreed, others may attend.

Meetings will be held on official time and at a time and place to be selected by mutual agreement.

The State Director or his designee will be in attendance. The Administrative Officer may be an ex-officio member of the committee.

ARTICLE 7 = USE OF OFFICIAL TIME

7.1 Solicitation of membership, the collection of dues, or other internal business of the Union, by Union officials or Union representatives, shall be conducted during the non-duty hours of the Employees concerned.

7.2 Each steward will obtain permission from his supervisor prior to leaving his work assignment to receive complaints or grievances and must advise the supervisor upon return to his assignment. When the purpose of such business is to contact another employee, the supervisor will arrange for the absence as soon as practical. The steward will also obtain permission and approval from the supervisor of the employee being contacted.

7.3 Employees who wish to leave their work area or assignment to contact a steward or other Union representative concerning the employee's complaint or grievance will first obtain the permission and approval of their immediate supervisor. The employee will advise his supervisor upon return to duty. The employee will be granted reasonable time when workload permits for this purpose.

7.4 Union officers or Union representatives will be allowed reasonable time to confer with management officials, directly or as a technical advisor and for any other purpose while representing Unit employees at Merit Systems Protection Board hearings or Federal Labor Relations Authority hearings or meetings. It is understood that the Union is entitled to official time for mid-term negotiations and reasonable time on an as needed basis to prepare proposals or counter proposals for mid-term bargaining.

7.5 Administrative Leave will be granted up to twenty-four (24) hours to Union officers or designated representatives for the purpose of attending AFGE-sponsored training sessions in employee-management relations in any one calendar year. No more than five (5) individuals can attend in any calendar year.

- (a) Training sessions will be for the purpose of orienting and briefing officers or representatives on matters concerning P.L. 95-454 and of mutual concern to the Employer and the Union.

- (b) Employees who are authorized under this Article to attend such training programs will obtain prior approval of the Employer. Requests for such leave must be submitted by the President of AFGE Local 3499 in writing as far in advance as possible and must be supported by a statement of the purpose of the leave and the content of the program or meeting to be attended.

ARTICLE 8 - USE OF OFFICIAL FACILITIES AND SERVICES

8.1 The Employer will provide the Union with space for a color coordinated file cabinet for its records easily accesible to the Local President.

8.2 The Employer will furnish annually, free of charge to the Union, a list of the names, grades, and organizational locations of all Unit personnel in the State of Colorado. All personnel actions pertaining to promotions, reassignments, resignations, accessions, retirements, or transfers will be reported monthly to the Union either via newsletter or separate report.

8.3 When available, the Union may reserve and use (during non-duty hours) Employer's conference rooms or other suitable space for internal business meetings of its officers, stewards, members and National AFGE officers with advance permission of Employer. Advance reservations are subject to cancellation in the event of unforeseen official needs. In the event Employer's space is not available or it becomes necessary to cancel a reservation, the Employer will attempt to secure for the Union conference facilities of other agencies in the building. The Union shall comply with all building security requirements.

8.4 The Employer will provide the Union space on bulletin boards for its use. It is agreed that the material posted will not be scurrilous or tend to embarrass the U. S. Government or be contrary to Federal law or regulations. The material may be subject to post review. The space in the lower right hand corner will be approximately one-fourth the size of the bulletin board in each location.

8.5 Union representatives will be allowed use of the Agency telephone system, including FTS, for consultation with management and employees in matters concerning grievances or when designated as representative by an employee to include consultation with other Union officials relative to matters under negotiation. The use of the Agency telephone system for the purpose of discussing internal Union matters is prohibited.

8.6 The officers and members of the Union who are employees of the Employer may make personal distribution of their newsletter and other Union publications in the working areas of the Employer during the non-duty hours of the employees involved.

ARTICLE 9 - POSITION DESCRIPTION AND CLASSIFICATION

9.1 Management agrees to provide each employee with a current copy of their position description and current revisions.

9.2 When an employee alleges, in writing, that his position is not properly classified he shall be furnished information on the Farmers Home Administration procedures and appeal rights set forth in applicable regulations. The employee may elect to be represented by the Union representative in discussing the matter with management or presenting an appeal.

9.3 Other duties as assigned is construed to mean other related duties.

ARTICLE 10 - HOURS OF WORK AND TOURS OF DUTY

10.1 The basic workweek shall be forty (40) hours consisting of eight (8) hours in each of the days Monday through Friday.

10.2 The basic non-overtime workday will not exceed eight (8) hours.

10.3 Present established office hours throughout the Colorado Farmers Home Administration offices are acceptable to both the Union and the Employer.

10.4 All travel will be scheduled during the basic workweek if administratively controllable by the Employer. However, if it is necessary for an employee to arrive at another location, at the beginning of the week, travel may be scheduled over the weekend.

10.5 Employees shall be allowed two (2) paid rest periods; one rest period during the middle of the first time period (AM) and one rest period during the middle of the second time period (PM) of each basic work day. These rest periods will be limited to fifteen (15) minutes each. The approximate time of the rest periods will be at the discretion of the Employer. These rest periods may be staggered so that all personnel are not on rest periods at the same time, to enable the Employer to maintain continuous service to the public.

ARTICLE 11 - MERIT PROMOTION PROCEDURES

11.1 Vacancy announcements will be posted on the official bulletin board for a period of seven (7) workdays. The announcement will contain a brief description of the position and of the basic eligibility requirements. Supervisors will be responsible for proper notification of qualified employees who will be absent from their duty station beyond the closing date of the announcement. In the event that a sufficient number of highly qualified employees do not apply for consideration, the Employer retains the right to: (1) consider all eligible employees; or (2) reannounce the vacancy. The present policy of allowing the Employer latitude to choose from among qualified employees, including Unit and outside employees, will be continued until changed by mutual agreement. The promotion procedure in effect at the time this Agreement is approved is hereby adopted by the parties and is made part of the Agreement.

ARTICLE 12 - LEAVE

12.1 Annual Leave: Every reasonable attempt consistent with the workload will be made to approve requests of employees for earned annual leave and with respect to the approving of extended earned annual leave for special vacations. Annual leave will be granted according to the needs of the Employer.

12.2 Sick Leave: Employees shall be granted and shall earn sick leave in accordance with applicable regulations. Approval of sick leave will be granted to employees when they are incapacitated for performance of their duties by sickness, injury, complications due to pregnancy, medical, dental, or optical treatment or examination, or when a member of the employee's immediate family is afflicted with a contagious disease and the presence at work of the employee would jeopardize the health of others. Immediate family is defined as those members living in the employee's household. The employee shall notify his immediate supervisor or his designated representative of his incapacitation for duty as soon as possible. A written report of absence may be accepted as a notification when telephone service is not available. The supervisor will be advised of requests to use sick leave for the purpose of scheduled medical, dental or optical appointments as far in advance as possible (and will be submitted to the immediate supervisor on an SF 71). The SF 71 will be returned to the employee approved or disapproved.

- (a) An employee ordinarily will not be required to furnish a doctor's certificate, including the employee's own statement or other satisfactory evidence of incapacity for duty, to substantiate a request for three (3) days or less of sick leave, unless there is reason to believe that an employee is abusing sick leave and the supervisor has counseled

the employee with respect to the use of his sick leave, a record of such counseling is on file, and the sick leave record of the employee subsequent to the counseling does not show elimination of sick leave abuse. When this certificate is required, the employee will be given official written notice that he will be required to furnish a medical certificate covering each absence. Supervisors will review the sick leave record of those employees required to present doctor's certificates for sick absence at least each six (6) months to determine if the requirement should continue. If no abuse has been committed by the employee during this period, the requirement for the medical certificate will be discontinued. The Supervisor will inform the employee in writing of his determination.

- (b) In cases of sick leave absences of more than three (3) days the employee is required to provide a medical certification. When the employee is unable to obtain the services of a physician, or the illness does not require such services, the employee's written explanation of the facts should be sufficient unless the approving officer has just cause to deny the sick leave.

ARTICLE 13 - PERFORMANCE APPRAISAL

PASS/FAIL
SEE SEP 10 2001
ATTACHED EMAIL
ON
NEXT PAGE

13.1 Each employee will be given a copy of the elements (including critical elements) and standards for their position at the beginning of the appraisal year. Elements (including critical elements) will be drawn from the employee's official position and job description and will be fair and reasonable. Standards used for measurement of performance in the elements (including critical elements) will be fair, objective and reasonable.

13.2 Performance ratings will be in writing and will be a result of the application of the performance standards to the employee's actual performance. Allowance will be made for factors beyond the employee's control, when the performance rating is assigned. The reasons for a specific rating will be indicated as necessary in writing.

SEP 18 2001

TO: Chapter Presidents
FROM: LR Specialist *Sue A. Collins*
SUBJECT: Request for Additional Pre-Decisional Input--FY 2001 Annual Performance Appraisals for State and County Offices Using Pass/Fail Rating System

The attached material is forwarded for your review and pre-decisional comment. Any comments you wish to make or questions you may have should be directed to Ms. Cheryl Fuller, Personnel Management Specialist, Performance Management Benefits and Awards Branch, at telephone (202) 418-8973, or fax at (202) 418-9118 by COB, Friday, Oct. 5, 2001.

cc: SED's, AR, CO, KS, MS, MT, NJ, NM, NY, ND, OK and TXSTO's; Caribbean Area Office

UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice PM-XXXX

For: State and County Offices Using Pass/Fair Rating System
[Writer: For offices or employees?]

**FY 2001 Annual Performance Appraisals for State and County Offices
Using Pass/Fail Rating System**

Approved by: Deputy Administrator, Management

1 Overview

A

Purpose

This notice provides employees and supervisors with information needed to complete the annual performance appraisal for the rating period ending September 30, 2001, and reminds employees and supervisors that:

- performance elements and standards shall be established within 30 calendar days of an employees's assignment to a position
 - an employee must serve under elements and standards in the current position for **90 calendar days** or more before supervisors complete the employee's performance appraisal.
-

B

Changes in Positions, Assignments, or Supervisors

New or amended performance elements and standards must be in place within 30 calendar days after an employee has been given a new position or assignment.

When an employee works under different supervisors during the designated appraisal period, each supervisor of 90 calendar days or more shall document the employee's accomplishments and prepare a summary rating. The summary rating should be forwarded to the employee's current supervisor for appropriate consideration in preparing the employee's **rating of record**.

Continued on the next page

Disposal Date	Distribution
March 1, 2002	State Offices; State Offices relay to County Offices

Notice PM-XXXX**1 Overview (Continued)****C****Labor Relations
Obligations**

Where exclusive representation exists, this notice does not apply until bargaining takes place. Where contract language addresses these policies and procedures for bargaining unit employees, contract language prevails.

D**Combined
Administrative
Management
System (CAMS)
Users**

Offices with CAMS that have deployed the web to their employees should submit ratings using CAMS.

2 Supervisor Action**A****Supervisor
Responsibilities**

Supervisors shall review employee performance by:

- ensuring that the employee has served under elements and standards in their current position for **90 calendar days** or more
- if necessary, obtaining written documentation of the employee's performance under a previous position if:
 - the employee is on detail for 120 calendar days or more
 - the change in supervisor occurs and the employee works under a new supervisor for 90 calendar days or more
 - the employee changes positions and serves in the new position for 90 calendar days or more
 - the employee transfers outside FAS, FSA, or RMA

Note: The former supervisor should provide a copy of Form 4140 to the employee's new supervisor.

- the employee performs collateral duties, then the rating shall reflect both of the following:
 - primary duties of the position
 - primary collateral duty

- checking the appropriate rating level for each element on Form 4140.

Continued on
the next page

Notice PM-XXXX

2 Supervisor Action (Continued)

B

Providing Additional Documentation

Supervisors shall provide additional documentation if an employee receives a "Results Not Achieved" performance rating.

Note: The documentation shall be attached to Form 4140 and must be signed by the rating, official and the reviewing official before employee signs.

3 Completing Form 4140

A

Supervisor and Employee Responsibilities

Supervisors and employees shall:

- ensure that item 11 reflects that the employee has served under the elements for 90 calendar days
- sign and date in item 12.

B

Reviewer Responsibilities

Sign in item 12 if summary of rating is "Result Not Achieved".

4 Distributing Form 4140

A

Distribution

Supervisors shall distribute the complete performance appraisals according to this table.

Step	Action
1	Forward the original, completed copies of Form 4140 to KCAO, Personnel Division (PD).
2	Provide the employee with a copy of Form 4140.
3	Retain a copy of Form 4140 for the supervisor's file.

Notice PM-XXXX

5 Unratable Employees**A****Rating
Requirement**

To be rated, an employee **must** have:

- elements and standards established on Form 4140
- been under signed elements and standards for at least **90 calendar days**.

Note: If the employee disagrees with elements and standards and refuses to sign them, the supervisor should note this in the employee's signature block on Form 4140.

6 Additional Information**A****Contacts**

If there are questions about rating employees, supervisors may contact the appropriate servicing personnel office according to this table.

IF the supervisor is located in...	THEN contact...
1 of the following: <ul style="list-style-type: none"> • APFO • KCCO • KCAO • KCFO • KC-ITSTO • KC-ITSDO • State Office 	KCAO, PD, Employee and Labor Relations Branch at 816-926-6643 TTY at 816-926-3063.
County Office	State Office.

B**Filing
Grievances**

Nonbargaining unit employees must grieve their performance appraisals under the Agency grievance procedure. Bargaining unit employees must use the negotiated grievance procedure.

ARTICLE 14 - HEALTH AND SAFETY

14.1 The Employer agrees to provide healthful and safe working conditions for all employees and will comply with applicable Federal Laws and regulations relating to the safety and health of its employees. All employees are responsible for prompt reporting of unsafe conditions.

14.2 An employee or group of employees who believe they are being required to work under conditions which are unsafe or unhealthy shall have the right to file a grievance under the negotiated grievance procedures.

14.3 No employee shall be required to work in areas where unsafe or unsanitary conditions have not been removed or remedied.

14.4 The Employer will promptly notify the Union President upon learning that any employee in the Unit has been injured on the job and who may be entitled to assistance through the Office of Workers' Compensation Programs.

ARTICLE 15 - REDUCTION IN FORCE AND RE-EMPLOYMENT

15.1 The Employer agrees to notify the Union of any impending reduction in force action, at which time the Union may make its views and recommendations to management concerning the implementation of the reduction in force action.

In the event of a reduction in force, existing vacancies will be utilized to the maximum extent possible to place in continuing positions employees who would otherwise be separated. All reductions in force will be carried out in strict compliance with applicable law and regulations.

15.2 Any career or career-conditional employee who is separated because of reduction in force will be placed on the re-employment priority list for all competitive positions in the commuting area for which qualified and available in accordance with applicable rules and regulations. It is understood that acceptance of a temporary appointment will not alter the employee's right to be offered permanent employment.

15.3 In the event a reduction in force is implemented, the Union shall have the right to review retention registers relative to reduction in force actions affecting employees in the Unit.

ARTICLE 16 - GRIEVANCE PROCEDURES

16.1 The purpose of this Article is to provide a mutually acceptable method for the prompt and equitable settlement of grievances.

16.2 A grievance means any complaint --

- (1) by any bargaining Unit employee concerning any matter relating to the employment of the bargaining Unit employee;
- (2) by the Union concerning any matter relating to the employment of any bargaining Unit employee; or
- (3) by any bargaining Unit employee, the Union or the Employer concerning;
 - (a) the effect or interpretation, or a claim or breach, of this Agreement; or
 - (b) any claimed violation, misinterpretation, or misapplication of any Law, rule or regulation affecting conditions of employment.

16.3 Questions which cannot be resolved by the parties as to whether or not a grievance is subject to grievance or arbitration may be referred by either party to arbitration as a threshold matter.

16.4 Grievances concerning the following matters are specifically excluded from coverage of this procedure:

- (1) Any claimed violation of subchapter III of Chapter 73 of Title 5 USC (relating to prohibited political activities):
- (2) retirement, life insurance, or health insurance:
- (3) a suspension or removal under Section 7532 of Title 5 USC:
- (4) any examination, certification, or appointment:
- (5) the classification of any bargaining Unit position which does not result in the reduction in grade or pay of a bargaining Unit employee:
- (6) failure to be selected for promotion when proper promotion procedures are used, that is, non-selection for promotion from a group of properly ranked and certified candidates or an action required to be taken by the Employer under provisions of statute or instruction of OPM:
- (7) an action terminating a temporary promotion and returning the employee to the former position or comparable position from which temporarily promoted:

- (8) non-adoption of a suggestion or disapproval of a quality salary increase, performance award, or other kind of honorary or discretionary award:
- (9) a preliminary warning or notice of a specific action which, if effected, would be covered under this grievance procedure (e.g., a notice of a proposed suspension) or would be excluded from coverage under this section:
- (10) separation actions taken on an employee serving a trial or probationary period.

16.5 This procedure shall be the exclusive procedure available to the Employer, the Union and bargaining Unit employees for resolving grievances.

16.6 An aggrieved bargaining Unit employee affected by discrimination (Ref 5 USC 2302(b)(1)), a removal or reduction in grade based on unacceptable performance (Ref 5 USC 4303) or other adverse action, suspensions of 14 days or more, removals or demotions, (Ref 5 USC 7512) may raise the matter under a statutory procedure or the negotiated grievance procedure, but not both. For the purpose of this article and pursuant to 5 USC 7121, an employee shall be deemed to have exercised this option under this section when the employee timely initiates an action under the applicable appeal procedure or timely files a written grievance under provisions of this Article, which ever occurs first. In cases of adverse action the grievance must be filed within 20 calendar days of the effective date of the action. In cases of discrimination, the grievance must be filed within 30 calendar days of the date of the action which gave rise to the complaint or from the date the Employee first became aware of the action, condition, or event.

16.7 General Provisions

1. Official time. A reasonable amount of official time without charge to leave will be afforded in accordance with the following:
 - (a) To the employee, if otherwise in an official duty status, to informally discuss with the first line supervisor a complaint the employee may have covering matters under the Article.
 - (b) To a Union representative, if otherwise in an official duty status, to informally discuss with the appropriate operating official a complaint the Union may have concerning matters under this Article.

- (c) To the employee and a Union representative, if both are otherwise in official duty status, for preparing and presenting a formal grievance or arbitration case.
- (d) To a Union observer, if otherwise in an official duty status, in those instances where this Negotiated Grievance Procedure or Chapter 71 of 5 USC provides for such an observer.

2. Representation Rights

- (a) Any employee or group of employees may personally present and process a grievance in accordance with section 15.10 hereunder without a representative and without intervention of the Union, except that a representative of the Union will be given the opportunity to be present on official time, if otherwise in an official duty status, during the grievance proceeding.
- (b) In the event of a group grievance, one Union representative will be allowed on official time.
- (c) During the processing of grievances beyond the informal stage, the Union may supply additional paid representation. The Employer is also entitled to additional representation.
- (d) Only the Union or individuals approved by the Union may represent employees on grievances processed under the Negotiated Grievance Procedure.
- (e) If the employee is represented by the Union, the Employer agrees to mail a copy of the decision or any other correspondence to the Union on the same day it is given or mailed to the employee.

16.8 Time Limits

Failure to comply with the time limits specified in the procedure may be cause to deny a grievance filed hereunder unless the prescribed time limits are extended by mutual agreement of the Employer and employee or Employer and Union representative where the employee is represented by the Union. If a party fails to respond within the time limits without extension, the other party may advance to the next step. Failure to advance the grievance within the time limits established in 16.9, 16.10, 16.12, 16.13 will constitute withdrawal.

16.9 Union grievances may be submitted in writing by the Union President or his designee, to the State Director or his designee. The State Director or his designee and the Union President or his designee will meet within ten (10) work days after receipt of the grievance for discussion. The State Director or his designee shall give the Union President or his designee the written answer within ten (10) work days after the meeting. If the grievance is not settled by this method, the Union may refer the matter to arbitration. Nothing will preclude either party from attempting to settle such grievance informally at the appropriate level.

16.10 Employer grievances may be submitted in writing by the Employer to the President of the Union or his designee. The Union President or his designee and the Employer representative will meet within ten (10) work days after receipt of the grievance for discussion. The Union President and/or his designee shall give the Employer his written answer within ten (10) work days after the meeting. If the grievance is not settled by this method, the Employer may refer the matter to arbitration. Nothing will preclude either party from attempting to settle such grievances informally at the appropriate level.

16.11 Contents of Grievance: Every grievance filed under this procedure must contain the following:

- (a) Name of the grieving employee or statement that the grievance is filed on behalf of the Union with the appropriate signature.
- (b) The nature of the grievance and the specific contract provision(s) in question, if any.
- (c) If an employee grievance - a statement as to how the employee is personally affected, if applicable, by the question of application or interpretation of the Agreement.
- (d) If a Union grievance - a statement identifying the employee in the Unit affected, if appropriate, and how they or the Union are affected by the interpretation or application of the Agreement.
- (e) The specific corrective action or interpretation requested or desired.
- (f) The name of the employee's initial Union Representative or a statement that the employee is unrepresented.

- (g) Copies of any documents related to the grievance.
- (h) Step 2 grievances will contain explanation of the previous attempts at resolution, i.e., summary of grievance presented, date and nature of decision rendered, individual who issued the decision.

16.12 Procedure

Step One:

The employee, the employee accompanied by the steward, or the steward will first discuss the dissatisfaction with the immediate supervisor within fifteen (15) work days from the date the incident or circumstance occurs, or when he or she became aware of the incident or circumstance. The supervisor will give the employee and/or the steward a decision within five (5) work days from the date of the discussion.

Step Two:

If the employee or the steward, if the steward is grieving, is not satisfied with the decision of the immediate supervisor and wishes to pursue the matter further, the steward, Union or the employee will discuss the problem with the next higher level supervisor up to and including the State Director, or his designee, until satisfaction is achieved. The employee or the Union has a total of seven (7) work days for each supervisory level. An employee or the Union must complete action under informal procedures before further action may be taken.

16.13 Formal procedures. If the employee or the Union is not satisfied under the informal steps, the employee or the Union will submit a written grievance within seven (7) work days from the date the decision was rendered in Step Two of the informal procedure. The written grievance will be to the State Director and shall contain a clear and concise statement of the grievance and indicate the relief sought, the date the incident or violation took place, and the specific section or sections of the Agreement involved. Within ten (10) work days after receipt of the written grievance, the State Director or his designee will arrange for a meeting of the concerned parties. This meeting will include the State Director or his designee, the chief steward, the employee and/or steward, and the supervisor involved. The State Director or his designee will give the employee and/or the Union the written answer within ten (10) work days following the discussion.

ARTICLE 17 - ARBITRATION

17.1 Arbitration may only be invoked by the Employer or the Union under the following conditions:

- (a) The Union may invoke arbitration within thirty (30) calendar days after issuances of the Employer's final decision under the negotiated grievance procedure.
- (b) The Union or the Employer may invoke arbitration within thirty (30) calendar days after either party has determined that a satisfactory settlement cannot be reached in resolving disputes between the parties.
- (c) The arbitration shall extend only to the interpretation or application of the Agreement and not to changes in or proposed changes in Agreements.

17.2 The party invoking arbitration will request the Federal Mediation and Conciliation Service to furnish the parties a list of seven (7) impartial persons qualified to act as arbitrators. An information copy of the request will be sent to the other party. The State Director or his designee and the Union President or his designee shall agree within ten (10) working days after receipt of the list, upon one of the listed arbitrators. If they cannot agree, they will each strike one name from the list and shall repeat the procedure. The remaining individual shall be the duly selected arbitrator. The arbitrator's decision shall be binding on the parties, unless either party files exceptions to an award with the Federal Labor Relations Authority under its regulations. The fee and expenses of the arbitrator shall be born equally by the parties.

17.3 The Employee participants in the hearing shall be in a duty status.

ARTICLE 18 - DISCIPLINARY AND ADVERSE ACTIONS

18.1 Disciplinary and adverse actions will be processed in accordance with the provisions of this Article. . . the provisions of 5 USC 7512 differ from this Article, the provisions of law will prevail.

18.2 The Employer specifically agrees to meet the procedural requirements provided by law and regulation of the Department of Agriculture in effecting adverse actions.

18.3 The Employer agrees to furnish the employee an extra copy of all reprimands or proposed suspensions or removals. The Employer also agrees to furnish the employee an extra copy of all decisions on proposed suspensions of 14 days or less or other adverse actions.

18.4 The Employer agrees that any letter of disciplinary or adverse action shall inform the employee of his right to representation by the Union.

18.5 The employee may represent himself or be represented only by the Union when the action is processed under the negotiated grievance and arbitration procedure. If the employee elects to be represented by the Union, such designation will be in writing; and the Employer will send copies of all subsequent correspondence addressed to the employee to the Union representative.

18.6 Disciplinary and adverse actions will be taken only for such cause as will promote the efficiency of the service. Grievances resulting from such actions will be filed with the State Director as a formal grievance.

18.7 When the Employer initiates a disciplinary or adverse action based on information developed administratively by himself or personnel reporting to him, he will initiate the action in a timely manner. Timely is defined as sixty (60) calendar days or less, and the sixty (60) calendar days will begin on the date the Employer receives the final information on which he relies to support the action. This section specifically does not apply to disciplinary or adverse actions based in whole or in part on reports from organizations outside the control of the Employer.

ARTICLE 19 - CONTRACTING OUT

19.1 The Employer shall advise the Union, if possible, at least ten (10) days in advance of its intention to solicit bids for contracting work, when such action could result in the reduction in force or demotion of any employee. Such advice will explain the reasons for action, and will provide the Union an opportunity to comment. The Employer will consider any comment and shall advise the Union of its decision.

ARTICLE 20 - PRINTING AND DISTRIBUTION OF THE AGREEMENT

20.1 The Employer will reproduce and distribute copies of the approved Agreement and Supplements and amendments thereto as follows:

- (a) One copy to each employee, including new employees. As a part of the Orientation process, new employees will be informed of the Union's exclusive recognition and provided with a Union supplied list of officers and stewards.
- (b) Thirtyfive (35) copies to the Union.

ARTICLE 21 - EFFECTIVE DATE AND DURATION OF AGREEMENT

21.1 The effective date of this Agreement is the date of approval by the Director of Personnel, United States Department of Agriculture. The termination date of this Agreement is three (3) years from the date of signing by the two parties to this Agreement. Either party may give written notice to the other party thirty (30) days preceding the first and second anniversary of the approval date of its desire to amend or modify certain Articles of this Agreement. When such notice is provided, the party or parties will furnish the other party a copy of proposed changes. Negotiations will start within thirty (30) calendar days thereafter. Negotiations will be restricted to only those Articles and changes so identified in advance.

21.2 Either party may give written notice to the other party not more than one hundred five (105) nor less than sixty (60) days prior to the termination date of this Agreement for the purpose of re-negotiating this Agreement. The present Agreement will remain in force and effect during the re-negotiation of said Agreement, until such time as a new Agreement is approved.

21.3 If neither party serves notice to re-negotiate this Agreement, the Agreement shall be automatically renewed for a three-year period, subject to the provisions of this Article.

IN WITNESS WHEREOF the parties hereto have caused this Basic Labor-Management Relations Agreement to be executed on this 14th day of July, 1981.

For Farmers Home Administration

For American Federation of
Government Employees, Local 3499

State Director
Denver, Colorado

Clarence D. Williams, Jr.
Local President
Denver, Colorado

MEMORANDUM OF UNDERSTANDING
BETWEEN
DEPARTMENT OF AGRICULTURE AND THE AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES

This Memorandum of Understanding is between the Department of Agriculture, hereinafter referred to as USDA, and the American Federation of Government Employees, hereinafter referred to as AFGE.

I. It is agreed that this Agreement is subject to and governed by CSRA.

II. The individual employee of the USDA who is a member of the AFGE and included within an exclusive unit shall obtain his/her SF-1187, REQUEST AND AUTHORIZATION FOR VOLUNTARY ALLOTMENT OF COMPENSATION FOR PAYMENT OF EMPLOYEE ORGANIZATION DUES, from AFGE and shall file it with the designated AFGE representative, who will forward it to the Personnel Office of the Agency. In those cases wherein management and the union disagree regarding the eligibility of an employee for dues withholding, both parties acknowledge that such representation disputes are the sole function of the FLRA and accordingly agree that the dues of such an employee shall be placed in an escrow account pending an appropriate Authority determination. The employee shall be instructed by AFGE to complete Part A and Part B. No other number must appear in the block provided as "identification Number" except the employee's Social Security Number.

III. Deductions will be made each pay period by the USDA and remittances will be made each pay period to the National Office of the AFGE. Remittances shall be accompanied by a computer tape, one for each pay period, by Locals, showing the names of the member employees from whose pay dues were withheld, the amount withheld, the code number of the Local to which each employee member belongs, social security number, and will be summarized to show the number of members for whom dues were withheld, total amount withheld, and the amount due the Local. Each tape will also include the name of each employee member for that Local who previously made an allotment for whom no deduction was made whether due to leave without pay or other cause. Such employee shall be designated with an appropriate explanatory term.

IV. It is agreed that Part A of SF-1187, including the insertion of code numbers of the AFGE (52) and the appropriate Local number, will be executed by the Financial Officer of the Local to which the employee member belongs or by the National Secretary-Treasurer of the AFGE, if the member is a member-at-large. The amount so certified shall be the amount of the regular dues (exclusive of initiation fees, assessments, back dues, fines and similar charges and fees). One standard amount for all employees or different amounts of dues for different employees may be specified. If there should be any change in the dues structure or amount, a blanket authorization listing each employee's name and social security number, and the amount of dues to be withheld will be submitted to the appropriate payroll office. The listing will be identified by labor organization and Local codes. Only one such change may normally be made in any period of twelve consecutive months for a given Local.

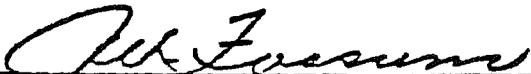
V. The payroll office of the USDA will terminate an allotment per a request received in accordance with any one of the following:

- (1) as of the beginning of the first full pay period following receipt of notice that exclusive recognition has been withdrawn;

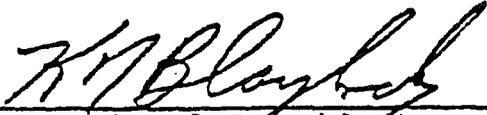
- (2) at the end of the pay period during which an employee member is separated from the USDA;
- (3) at the end of the pay period during which the payroll office receives notice from the AFGE or a Local of the AFGE that the employee member has ceased to be a member in good standing;
- (4) effective September 1, 1979, and each September 1 thereafter for all allotments in effect as of September 1, 1978.
- (5) on the annual anniversary date of each allotment completed after September 1, 1978.

VI. The USDA payroll office will send to the National Financial Officer of the AFGE a copy of each written revocation of an authorization which it receives. Revocation must be submitted to the appropriate Local in writing over the signature of the member on the Standard Form 1188 and must be submitted to the appropriate Personnel Office not earlier than the first day of the month prior to the annual date upon which revocation may be effected in accordance with the above.

Agreed to on the 15th day of January, 1979, and as amended by FLRA decision No. O-PS-1 on April 19, 1979.



Director of Personnel
US Department of Agriculture



National President
American Federation of
Government Employees

6/22/79
Date

The Federal Service Labor-Management Relations Statute

(Chapter 71 of Title 5
of the U.S. Code
and Related Amendments
to 5 USC 5596(b) the
Back Pay Act)

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

“Subpart F—Labor-Management and Employee Relations

“CHAPTER 71—LABOR-MANAGEMENT RELATIONS

“SUBCHAPTER I—GENERAL PROVISIONS

“Sec.

- “7101. Findings and purpose.
- “7102. Employees' rights.
- “7103. Definitions; application.
- “7104. Federal Labor Relations Authority.
- “7105. Powers and duties of the Authority.
- “7106. Management rights.

“SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

“Sec.

- “7111. Exclusive recognition of labor organizations.
- “7112. Determination of appropriate units for labor organization representation.
- “7113. National consultation rights.
- “7114. Representation rights and duties.
- “7115. Allotments to representatives.
- “7116. Unfair labor practices.
- “7117. Duty to bargain in good faith; compelling need; duty to consult.
- “7118. Prevention of unfair labor practices.
- “7119. Negotiation impasses; Federal Service Impasses Panel.
- “7120. Standards of conduct for labor organizations.

“SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

“Sec.

- “7121. Grievance procedures.
- “7122. Exceptions to arbitral awards.
- “7123. Judicial review; enforcement.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"Sec.

"7131. Official time.

"7132. Subpenas.

"7133. Compilation and publication of data.

"7134. Regulations.

"7135. Continuation of existing laws, recognitions, agreements, and procedures.

"SUBCHAPTER I—GENERAL PROVISIONS

5 USC 7101.

"§ 7101. Findings and purpose

"(a) The Congress finds that—

"(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

"(A) safeguards the public interest,

"(B) contributes to the effective conduct of public business, and

"(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

"(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

5 USC 7102.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

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

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

5 USC 7103.

"§ 7103. Definitions; application

"(a) For the purpose of this chapter—

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

“(2) ‘employee’ means an individual—

“(A) employed in an agency; or

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

but does not include—

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

“(ii) a member of the uniformed services;

“(iii) a supervisor or a management official;

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

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

5 USC 7311.

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

5 USC 2105.

“(A) the General Accounting Office;

“(B) the Federal Bureau of Investigation;

“(C) the Central Intelligence Agency;

“(D) the National Security Agency;

“(E) the Tennessee Valley Authority;

“(F) the Federal Labor Relations Authority;

or

“(G) the Federal Service Impasses Panel;

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

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

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

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

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

“(5) ‘dues’ means dues, fees, and assessments;

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

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

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

“(9) ‘grievance’ means any complaint—

“(A) by any employee concerning any matter relating to the employment of the employee;

“(B) by any labor organization concerning any matter relating to the employment of any employee; or

“(C) by any employee, labor organization, or agency concerning—

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

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

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

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

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

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

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

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

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

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

“(15) ‘professional employee’ means—

“(A) an employee engaged in the performance of work—

“(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

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

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

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

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

“(16) ‘exclusive representative’ means any labor organization which—

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

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

“(i) on the basis of an election, or

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

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

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

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

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

Presidential
order.

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

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

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

Presidential
order.

5 USC 7104.

“§ 7104. Federal Labor Relations Authority

“(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

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

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

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

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

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

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

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

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

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

“(2) The General Counsel may—

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

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

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

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

Report to
President.

5 USC 7105.

“§ 7105. Powers and duties of the Authority

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

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

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

“(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative

by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

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

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

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

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

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

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

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

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

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

“(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary. 5 USC 3105.

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

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

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

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

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

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

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

affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

“(1) the date of the action; or

“(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

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

Hearings.

“(1) hold hearings;

Administer oaths.

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

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

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

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

5 USC 7106.

“§ 7106. Management rights

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

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

“(2) in accordance with applicable laws—

“(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

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

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

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

“(ii) any other appropriate source; and

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

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

“(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

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

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

“SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES
AND LABOR ORGANIZATIONS

“§ 7111. Exclusive recognition of labor organizations

5 USC 7111.

“(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

“(b) If a petition is filed with the Authority—

Petition.

“(1) by any person alleging—

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

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

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

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

Hearing.

Election.

“(c) A labor organization which—

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

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

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

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

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

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

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

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

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

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

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

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

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

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

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

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

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

5 USC 7112.

“§ 7112. Determination of appropriate units for labor organization representation

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

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

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

“(2) a confidential employee;

Post, 1215.

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

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

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

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

“(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

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

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

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

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

“§ 7113. National consultation rights

5 USC 7113.

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

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

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

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

“(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

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

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

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

5 USC 7114.

"§ 7114. Representation rights and duties

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

"(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

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

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

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

"(ii) the employee requests representation.

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

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

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

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

"(B) exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

“§ 7115. Allotments to representatives

5 USC 7115.

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

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

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

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

“(c) (1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

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

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

5 USC 7116.

"§ 7116. Unfair labor practices

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

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

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

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

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

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

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

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

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

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

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

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

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

"(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

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

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

"(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

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

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

Ante, p. 1114.

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

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

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

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

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

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

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

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

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

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

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

"§ 7117. Duty to bargain in good faith; compelling need; duty to consult 5 USC 7117.

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

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

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

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

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

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

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

Hearing.

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

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

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

Appeal.

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

“(A) filing a petition with the Authority; and

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

Petition.

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

“(A) file with the Authority a statement—

“(i) withdrawing the allegation; or

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

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

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

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

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

“(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation

rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

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

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

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

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

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

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

"§ 7118. Prevention of unfair labor practices

5 USC 7118.

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

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

Complaint.

"(A) of the charge;

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

Hearing.

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

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

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

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

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

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period. the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The General Counsel may prescribe regulations providing for

Regulations.

informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

Hearing.

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

5 USC 551.

Transcript.

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

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

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

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

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

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

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

Rules and regulations, interpretation.

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

5 USC 7119.

“§ 7119. Negotiation impasses; Federal Service Impasses Panel

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

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

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

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

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

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

Membership.

“(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

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

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

Investigation.

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

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

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

“(i) hold hearings;

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

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

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

5 USC 7120.

“§ 7120. Standards of conduct for labor organizations

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

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

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

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

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

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

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

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

Filing of reports.

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

Regulations.

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

“(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential

employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

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

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

“(2) take any other appropriate disciplinary action.

“SUBCHAPTER III—GRIEVANCES

“§ 7121. Grievance procedures

5 USC 7121.

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

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

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

“(1) be fair and simple.

“(2) provide for expeditious processing, and

“(3) include procedures that—

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

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

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

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

“(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

“(2) retirement, life insurance, or health insurance;

“(3) a suspension or removal under section 7532 of this title;

“(4) any examination, certification, or appointment; or

“(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

5 USC 7321.

“(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option

Ante, p. 1114.

under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

Ante, p. 1140.

Ante, p. 1133,
1136.

Ante, p. 1138.

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

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

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

Ante, p. 1143.

5 USC 7122.

“§ 7122. Exceptions to arbitral awards

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

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

“(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

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

“§ 7123. Judicial review; enforcement

5 USC 7123.

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

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

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

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

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

Petition.

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

5 USC 706.

shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

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

“SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

5 USC 7131.

“§ 7131. Official time

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

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

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

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

“(1) any employee representing an exclusive representative, or

“(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

5 USC 7132.

“§ 7132. Subpenas

5 USC 3105.

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

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

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

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

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

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

“§ 7133. Compilation and publication of data

5 USC 7133.

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

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

5 USC 552, 552a.

“§ 7134. Regulations

5 USC 7134.

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

“§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

5 USC 7135.

“(a) Nothing contained in this chapter shall preclude—

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

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

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

5 USC 7301 note,
7701 note.

of this chapter or by regulations or decisions issued pursuant to this chapter.”.

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code is amended to read as follows:

“(b) (1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

“(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

“(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

“(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7701(g) of this title; and

“(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

“(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

“(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

“(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

“(3) For the purpose of this subsection, ‘grievance’ and ‘collective bargaining agreement’ have the meanings set forth in section 7103 of this title, ‘unfair labor practice’ means an unfair labor practice described in section 7116 of this title, and ‘personnel action’ includes the omission or failure to take an action or confer a benefit.”.

Ante, p. 1191.

Ante, p. 1138.

5 USC 5551,
5552.

Ante, p. 1192.