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SECRETARY OF THE AIR FORCE

DEPARTMENT OF THE AIR FORCE
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Personnel

LABOR-MANAGEMENT RELATIONS

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements Department of the Air Force Policy Directive 36-1, *Appropriated Funds Civilian Management and Administration*. It contains the Department of the Air Force procedures and guidance for managers and supervisors when working with a union recognized by law as the exclusive bargaining representative of civilian employees. It assigns responsibilities to commanders, management officials, supervisors, civilian personnel officers (CPOs), labor relations officers (LROs), and Staff Judge Advocates (SJAs), and used in conjunction with applicable *Federal Service Labor-Management Relations Statute*, Title 5, United States Code (USC) Chapter 71 (the Statute). This publication applies to the United States Space Force (USSF), Regular Air Force, Air Force Reserve, and Air National Guard civilian employees, administered under Title 5, USC. It does not apply to Title 32 Air National Guard technicians, or employees of the Defense Civilian Intelligence Personnel System. This publication is not intended to grant rights to employees or unions other than rights already provided by law. This publication is not subject to national consultation or bargaining.

In collaboration with the Chief of Air Force Reserve (AF/RE) and the Director of the Air National Guard (NGB/CF), and the Deputy Chief of Space Operations for Human Capital (SF/S1), the Deputy Chief of Staff for Manpower, Personnel, and Services (AF/A1) develops personnel guidance for labor-management relations. This Air Force publication may be supplemented at any level; Field Command (FLDCOM) and Major Command (MAJCOM)-level supplements must be approved by the Human Resource Management Strategic Board (HSB) prior to certification and approval. **(T-1).** Refer recommended changes and questions about this publication to the Office of

Primary Responsibility (OPR) listed above using the AF Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field through the appropriate functional chain of command. Ensure that records generated as a result of processes prescribed in this publication adhere to Air Force Instruction 33-322, *Records Management and Information Governance Program,* and are disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System. The authorities to waive wing/Space Force equivalent/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See DAFI 33-360*, Publications and Forms Management,* for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the requestor's commander for non-tiered compliance items. The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the Air Force. Compliance with the attachments in this publication is mandatory.

SUMMARY OF CHANGES

Interim Change (IC) 1 designates AFI 36-701 as Department of the Air Force Instruction (DAFI) 36-701. IC-1 revises DAFI 36-701 to comply with Executive Order (EO) 14003 *Protecting the Federal Workforce,* issued 22 January 2021. EO 14003 requires revision of guidance promulgated under the now revoked EOs 13836, 13837, and 13839. All guidance promulgated under EO 13836, 13837 and 13839 is deleted. Additional changes include USSF; updates to office symbols; the addition of coordinating non-negotiability appeals with Headquarters Air Force Workforce Management Division (AF/A1CP) and the Office of The Judge Advocate General, Civil Law and Litigation, Personnel and Information Law Division, Labor Law Field Support Center (LLFSC); the coordinating unilateral implementation of a CBA with AF/A1CP and the LLFSC; the submission requirement of arbitration awards and collective bargaining agreements (CBAs) to the Office of Personnel Management (OPM). A margin bar (|) indicates newly revised material.

Chapter 1

OVERVIEW

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

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

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

Chapter 2

ROLES AND RESPONSIBILITIES

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

2.1.1. Provides guidance on provisions of this Instruction.

2.1.2. Advises Headquarters Air Staff management officials of their responsibilities and obligations for national consultation on Air Force instructions, manuals, pamphlets, and other changes to policies and programs impacting bargaining unit employees.

2.1.3. Facilitates national consultation and Air Force labor-management forums.

2.1.4. Maintains an effective relationship with the Secretary of Air Force Assistant General Counsel for Administrative Law (SAF/GCA), and the LLFSC on labor relations matters.

2.1.5. Advocates for cooperative and productive labor-management relations.

2.1.6. Represents Air Force management with national union representatives.

2.2. Air Force Personnel Center (AFPC).

2.2.1. Provides operational guidance and management advisory services on a wide range of labor relations issues including bargaining obligations and contract negotiation.

2.2.2. Serves as the agency focal point for FLDCOM, MAJCOM and installation labor relations issues requiring collective resolution for the overall program.

2.3. LLFSC.

2.3.1. Represents the activity in any representation petitions and proceedings. This includes engaging in any litigation activities (i.e., preparing briefs, attending hearings).

2.3.2. Defends against and files Unfair Labor Practice (ULP) charges with the Federal Labor Relations Authority (FLRA) for Air Force installations. This includes engaging in any litigation activities necessitated by a ULP.

2.3.3. Coordinates written declarations of non-negotiability to the DCPAS. Management may not declare proposals non-negotiable without DCPAS review and concurrence. **(T-0).**

2.3.4. Defends any negotiability disputes brought before the FLRA. This includes engaging in any litigation activities (i.e., preparing briefs, attending hearings) necessitated by a negotiability dispute.

2.3.5. Prepares and responds to appeals of arbitration awards made under Section 7122 *Exceptions to arbitral awards* of the Statute or other applicable provisions of law or regulation with activity, FLDCOM and MAJCOM involvement.

2.3.6. Represents installation, FLDCOM and MAJCOM management in any impasse proceedings filed with the Federal Service Impasses Panel. This includes engaging in any litigation activities necessitated by a Federal Service Impasses Panel proceeding.

2.3.7. Some Air Force Materiel Command (AFMC) bases are responsible for labor law representation for their respective organizations, with the exception of representation in federal court. The LLFSC has representational responsibility for all labor litigation filed against the

Air Force in Federal Court. The LLFSC also has all FLRA litigation responsibility (with the exception of FLRA litigation involving select AFMC bases, Air Force Reserve Command bases, and Air National Guard bases). The term FLRA litigation as used in this Instruction refers to all matters filed against or on behalf of the Air Force with the FLRA, the FLRA Office of the General Counsel and its Regional Offices, and the Federal Service Impasses Panel.

2.4. FLDCOM, MAJCOMs, Field Operating Agencies and Direct Reporting Units:

2.4.1. Advise subordinate organizations on Command policies affecting the civilian workforce and associated labor obligations. **(T-1).**

2.4.2. Review and oversee precedential or controversial labor relations matters. **(T-1).**

2.4.3. HQ AFMC provides guidance, oversight, interpretation, and administration of AFMC-wide collective bargaining agreements (CBAs) with unions holding recognition at the MAJCOM level. **(T-1).**

2.5. Installation Commanders.

2.5.1. Provide overall direction in the execution of the Labor-Management Relations Program at the installation. **(T-1).**

2.5.2. Designate CPOs or LROs to act on their behalf in formulating local labor-management relations policy for appropriated fund employees. **(T-3).**

2.5.3. Designate non-appropriated fund (NAF) Human Resource Officers to act on their behalf in formulating local labor-management relations policy for non-appropriated fund employees. **(T-3).**

2.5.4. Ensure sufficient resources to effectively manage the program. **(T-3).**

2.5.5. Authorize subordinates to engage in collective bargaining with the duly elected representatives of the union. **(T-3).**

2.5.6. Make lawful commitments on behalf of the installation by executing negotiated labor-management agreements. **(T-3).**

2.5.7. In consultation with the appropriate LLFSC and LRO, execute appropriate actions to resolve alleged ULPs filed by individuals or collective bargaining agents. **(T-1).**

2.5.8. In consultation with the appropriate LLFSC and LRO, approve the filing of ULP charges, as necessary, against collective bargaining agents when the FLDCOM and MAJCOM has delegated the authority to the installation. **(T-3)**.

2.5.9. Post notices and implement orders as required by the FLRA. **(T-0).**

2.5.10. Encourage labor-management forums by participating in labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by labor and management. **(T-3).**

2.6. Civilian Personnel Officers.

2.6.1. Serve as principal advisors to commanders and their staff on labor relations matters involving appropriated fund employees. **(T-3).**

2.6.2. Designate a labor relations officer as the principal point of contact in conducting labor relations matters with appropriated fund labor organization representatives. **(T-3).**

2.6.3. Participate in contract negotiations with labor organization representatives when designated by the commander. **(T-3).**

2.7. Installation Labor Relations Officers.

2.7.1. Provide advisory services on a wide range of labor relations issues to all levels of installation management. Serve as the principal point of contact in conducting labor relations matters with appropriated fund labor organization representatives and communicate with those representatives as required by the Federal Service Labor-Management Relations Statute or an applicable CBA. **(T-3).**

2.7.2. Establish a system for sharing information among management officials and supervisors on all aspects of the appropriated fund labor relations program. This system involves management officials and supervisors of tenant organizations serviced by the civilian personnel section, regardless of whether the tenants are located on or off the installation. **(T-3).**

2.7.3. Discuss labor relations responsibilities with new supervisors of appropriated fund bargaining unit employees. **(T-3).**

2.7.4. Train civilian and military management officials and supervisors in their duties, responsibilities, and obligations under the Air Force labor relations program, the Statute and the CBA. **(T-3).**

2.7.5. Obtain agency head review of labor agreements in accordance with **paragraph 8.1** of this Instruction. **(T-0)**.

2.7.6. Distribute or post any applicable approved CBA to all current and newly assigned management officials and supervisors (military and civilian) responsible for its administration. **(T-3).**

2.7.7. Maintain an effective relationship with AF/A1CP and the LLFSC on labor relations matters. **(T-1)**.

2.7.8. Notify employees in bargaining units of their Weingarten rights set forth in section 7114(a)(3) of the Statute on an annual basis. **(T-0).**

2.7.9. Assist the appropriate legal office with union requests for information and bargaining proposals, if needed. **(T-1).**

2.7.10. Consult with AF/A1CP and the LLFSC at least 90 days prior to automatic renewal or rollover of CBAs. Rollover CBAs require agency head review. **(T-1)**.

2.7.11. Coordinate with AFPC where the outcome of negotiations may affect or impact operations or require the AFPC to take certain actions. **(T-1).**

2.7.12. Participate in contract negotiations with labor organization representatives when designated by the commander. **(T-3).**

2.7.13. In coordination with management officials, ensure civilian position descriptions and the Defense Civilian Personnel Data System automated database are coded with the correct bargaining unit status codes. **(T-1).**

2.7.14. Assist management in responding to requests for information. **(T-3).**

2.7.15. Process grievances submitted under a negotiated grievance procedure. **(T-3).**

2.7.16. Coordinate with management, SJA, and LLFSC on representation cases, ULP charges, negotiability issues, and arbitration awards. **(T-1).**

2.7.17. Coordinate with the CPO, AF/A1CP and the LLFSC, if necessary, on all labor-management issues with base-wide or Department of the Air Force-wide ramifications. **(T-1)**.

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

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

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

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

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

2.8.5. Tracks and reports use of official time as required.

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

2.8.7. Assists management in responding to requests for information.

2.8.8. Processes grievances submitted under a grievance procedure.

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

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

2.8.11. When applicable, the labor relations officer may perform the above functions and/or assist the Human Resource Office.

2.9. Management Officials and Supervisors.

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

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

relations officer for appropriated fund employees; or to the NAF Human Resource Office for nonappropriated fund employees.

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

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

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

2.9.6. Assist labor relations officer and legal advisors in preparing for third party proceedings.

2.9.7. Reviews and approves requests for official time in accordance with local agreements.

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

2.10. SJAs.

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

2.10.2. Coordinate, when appropriate, with the CPO, labor relations officer, NAF Human Resource Office, AF/A1CP and the LLFSC on the terms of any proposed settlement agreement in third party proceedings involving conditions of employment for civilian employees.

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

2.10.3.1. SJA will coordinate with LLFSC to ensure there are no Air Force-wide implications. **(T-1).**

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

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

Chapter 3

RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

3.1. Employee Rights. In accordance with 5 USC § 7102, each employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. **(T-0).**

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

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

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

3.2. Labor-Management Forums. The use of labor-management forums may benefit managers, unions, and employees. Disputes may be resolved more quickly and earlier than in other dispute resolution processes. Litigation and other costs are lower, and further complaints are avoided as parties learn to communicate better with each other. In addition, the labor-management forum is less adversarial than other processes available for resolving disputes. This leads to solutions that are more creative, and the parties are more satisfied with the results.

3.3. Strike, work stoppage, slowdown, or picketing is prohibited. It is unlawful and grounds for termination for a Federal employee to "participate in a strike, or assert the right to strike, against the Government of the United States" (5 USC § 7311). Further, it is an ULP for labor organizations to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with the agency's operations (5 USC § 7116). When such actions are threatened or occur, management officials and supervisors must immediately notify the CPO, who, in turn, notifies the SJA. **(T-1).** The CPO notifies LRO to coordinate with LLFSC. The CPO and SJA advise management on a course of action given the facts of the situation.

3.4. Union organizing. The Statute provides that an agency shall recognize a labor organization as the exclusive representative of employees in a bargaining unit, if that organization has been selected as the representative by a majority of the unit's employees who voted in a secret ballot election. (**T-0**).

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

3.4.1.1. Demonstrate a community of interest;

3.4.1.2. Promote effective dealings with the agency; and

3.4.1.3. Promote the efficiency of agency operations.

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

3.4.3. Petitions may be filed to amend or clarify the description of a bargaining unit (e.g., if a reorganization changes the name of the activity), to consolidate two or more bargaining units, or to determine if individual employees are included in the bargaining unit. It is strongly recommended that activities file these latter types of petition upon any organizational changes, which impact on the bargaining unit's description. Activities must coordinate with the LLFSC before filing a clarification petition. **(T-1).** Where Department of Defense components are co-located, bargaining units should not cover more than one component (e.g. Air Force and Navy or Air Force and Army employees).

3.5. Representation Proceedings (*5 Code of Federal Regulations (CFR) Part 2422*). When the installation, FLDCOM or MAJCOM receives a representation petition from the FLRA Regional Director, it must notify the LLFSC immediately and forward a copy of the petition to that office within two workdays. **(T-1)**. The LLFSC assigns a management representative to the case and notifies the FLRA Regional Director of such assignment. The assigned representative issues or coordinates on any further management correspondence concerning the case.

Chapter 4

MANAGEMENT RIGHTS

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

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

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

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

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

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

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

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

4.3.1. Permissive rights include:

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

4.3.1.2. Procedures which management officials of the agency will observe in exercising any authority under this section; or

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

4.3.2. Although the law does not mandate bargaining over permissive management rights, once the parties include such rights in the CBA, they are enforceable for the life of the agreement. Contact the LRO, AF/A1CP and the LLFSC for questions on mandatory and permissive subjects of bargaining.

Chapter 5

NATIONAL CONSULTATION RIGHTS (NCRS)

5.1. Legal Requirement for Consultation. Section 7113 of the Statute requires the Air Force to consult with labor organizations afforded National Consultation Rights. Any issue relating to a labor organization's eligibility for, or continuation of national consultation, is subject to determination by the FLRA.

5.2. Matters Subject to Consultation. The Air Force informs labor organizations granted NCR of any substantive change in conditions of employment proposed by the AF that are applicable to field activities. Conditions of employment means personnel policies, practices, and matters (whether established by rule, regulation, or otherwise) affecting working conditions of bargaining unit employees. **(T-0).** For example, if an Air Force organization proposed an Instruction changing the safety requirements for flight line employees; it would constitute a change in working conditions. The Air Force need not provide national consultation opportunities where it has already been done by the Department of Defense, unless the Air Force proposes supplemental policies or programs.

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

5.4. How the Air Force Accomplishes National Consultation.

5.4.1. Each directorate or equivalent organization level in DAF is responsible for national consultation on matters within its jurisdiction. All memoranda, with attachments, will be coordinated through AF/A1CP prior to being sent to labor organizations. **(T-1)**. AF/A1CP will provide guidance on the necessity of consultation and the content of national consultation memoranda. **(T-1)**.

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

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

5.4.4. Request a formal reply from the labor organization including a reasonable due date for such a reply. Include a statement that if a reply is not received by that date, it is then understood that the labor organization has no comments concerning the proposed change. Except in unusual circumstances when the time factor is critical, the transmittal letter will provide no less than 30 calendar days for response from the labor organizations. **(T-1).**

5.5. Labor organization request for meeting. A labor organization may request a meeting to discuss the proposed change. This request must be made within the comment period. The office to which the request is made will promptly arrange the meeting. The office will carefully consider the labor organization's views and comments and make an appropriate response either at the time of the meeting, or at a later date in writing. This type of meeting does not alleviate the responsibility for, or take the place of, bargaining at the local level. **(T-1).**

5.6. No request for NCR. If a response is not received by the specified time in the national consultation memorandum, and an extension is not granted, the NCR obligation will be considered fulfilled and the proposed change may be implemented subject to local bargaining. If a labor organization with NCR submits timely views or recommendations, the office of functional responsibility will consider such views and recommendations prior to taking final action. Copies of any responses from labor organizations should be retained with copies of the national consultation memorandum. **(T-1).**

5.6.1. The office of functional responsibility will inform each labor organization of the final action taken on its views or comments. Unions will be informed before implementation of the proposed change. Notification will include a brief explanation of why the office of primary responsibility did or did not incorporate the views or comments. **(T-1).**

5.6.2. Offices of functional responsibility will keep HQ USAF/A1CP informed of consultation memo, labor organization responses, and any subsequent correspondence so that it may monitor the progress of such consultation and compliance with the labor statute. **(T-1).**

Chapter 6

DUTY TO BARGAIN

6.1. Duty to Bargain. The following list provides reasons why a particular proposal may fall outside management's duty to bargain. This listing does not address whether a proposal is non-negotiable (e.g., violates management's rights or government-wide law, rule or regulation). If management has any questions regarding whether the agency has a duty to bargain over a proposal, it must contact the LRO who provides guidance on the matter. **(T-1)**. When necessary, the LRO coordinates with AF/A1CP and the LLFSC for further guidance. Management should consider the following questions when reviewing union proposals:

6.1.1. Does the proposal directly affect non-bargaining unit employees' conditions of employment?

6.1.2. Does the proposal directly affect the conditions of employment of employees in other bargaining units?

6.1.3. Does the proposal concern matters unrelated to conditions of employment or is it outside of the working relationship?

6.1.4. Is the subject matter of the proposal covered by (included in) the parties' agreement?

6.1.5. Did the parties previously negotiate over the proposal and elect not to include it in the negotiated agreement?

6.1.6. Does the management-initiated change, which is the subject of the negotiations, have a de minimis effect on the bargaining unit employees?

6.1.7. Has the union specifically waived its right to negotiate over the matter?

6.1.8. Does the proposal limit management's reserved rights (e.g., requiring management to notify the union 15 days prior to filing a ULP charge)?

6.1.9. Was management authorized to take the action it is proposing by the terms of the parties' agreement?

6.1.10. Does a law or government-wide rule or regulation provide the agency sole and exclusive discretion to take a particular action?

6.1.11. Does the proposal conflict with agency or government wide rules and regulations for which there is a compelling need under 5 USC § 7117?

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

6.2.1. The practice is a condition of employment and/or working conditions.

6.2.2. The practice has been consistently practiced over an extended period of time. There is no precise answer to what "consistently" means or how long is "an extended period of time." In determining whether a past practice has been established, management should consider the frequency of the occurrence.

6.2.3. Management is aware of the practice.

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

6.3. De minimis. The term "de minimis" is used to refer to a change in conditions of employment that is not significant enough to require bargaining. Thus, if an issue is more than de minimis (important enough) the agency must bargain the issue. **(T-0).** Any questions regarding the application of the de minims test should be referred to the LRO for guidance. If additional guidance is required, the LRO contacts the LLFSC for assistance.

6.4. Negotiability Appeals. Whenever a question of negotiability arises, the LRO will consult with AF/A1CP and the LLFSC. **(T-1)**. AF/A1CP and the LLFSC will coordinate any negotiability appeal with Defense Civilian Personnel Advisory Services (DCPAS). **(T-0)**.

6.4.1. If a union requests a written allegation of non-negotiability, the LRO is required to:

6.4.1.1. Obtain approval from the DCPAS, AF/A1CP and the LLFSC before providing a written response to the union. **(T-0)**.

6.4.1.2. Provide copies of the union's proposal and management's counter proposal (if appropriate) to the DCPAS with the rationale used to determine that the issue is non-negotiable, including supporting case law; **(T-0)** and

6.4.1.3. Provide a written response to the union within 10 calendar days of the union's written request following DCPAS approval. The written response will provide management's rationale for declaring the union proposal non-negotiable. **(T-0)**.

6.4.2. If a union files a petition for review with the FLRA within 15 calendar days of receipt of the written allegation of non-negotiability of a proposal, the LLFSC will submit to DCPAS at **dodhra.mc-alex.dcpas.mbx.hrops-lerd-labor-relations@mail.mil** and must select the email settings that request both delivery and "read" receipts (to ensure delivery to DCPAS):

6.4.2.1. Supporting documentation within 5 calendar days of petition receipt from the union. This includes the meaning and intent of the language and any documents served on the local component; **(T-0)** and

6.4.2.2. The proposal(s) declared non-negotiable and a draft statement of position, within 15 calendar days of petition receipt from the union. DCPAS will review and concur or prepare the statement of position. **(T-1)**.

6.4.3. DCPAS retains the sole authority to declare a proposal non-negotiable. Failure to adhere to the requirements identified above may result in DCPAS interceding directly with the FLRA, and withdrawing the declaration of non-negotiability. **(T-0)**.

6.5. Unilateral CBA Implementation. Unilateral implementation occurs when an employer unilaterally implements its last best offer at the end of the bargaining process. Unilateral

implementation is often considered by the agency after waiver of a bargaining right, by the union, by the failure to bargain or waiver of a bargaining right, by the union, by inaction. Any such waiver must be clear and unmistakable**. (T-1)**. Before unilaterally implementing a collective bargaining agreement, installation labor personnel must coordinate with AF/A1CP and the LLFSC. **(T-1)**.

Chapter 7

COLLECTIVE BARGAINING/NEGOTIATIONS

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

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

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

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

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

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

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

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

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

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

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

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

7.6.3. In order to conform with and remove any conflicts with any new law, government-wide regulation and Air Force policy, management will notify the union of its intent to reopen the CBA within the renegotiation open window notification period, upon expiration, extension, or "rollover".

7.7. Policy. It is the guidance of the federal government that agencies secure CBAs that: promote an effective and efficient means of accomplishing agency missions; encourage the highest levels of employee performance and ethical conduct; ensure employees are accountable for their conduct and performance on the job; expand agency flexibility to address operational needs; reduce the cost of agency operations, including with respect to the use of official time; are consistent with applicable laws, rules, and regulations; do not cover matters that are not, by law, subject to bargaining; and preserve management rights under 5 USC § 7106(a). **(T-0)**.

7.8. Agency Head Review Approval Distribution. Upon agency head review approval of a new CBA agreement, the CPO/LRO must send a copy of the CBA to AF/A1CP and AFPC/DP3FS for upload to the OPM CBA database. **(T-1)**.

Chapter 8

AGENCY HEAD REVIEW

8.1. Air Force Labor Agreements. The provisions of 5 USC § 7114(c) provide for agency head review through DCPAS of any agreement reached through collective bargaining. If resolution of an individual grievance results in modification of the CBA, then that part of the settlement altering the CBA is reviewable as the CBA may only be changed through collective bargaining (whether it takes the form of a settlement or other format). Settlement agreements resolving individual grievances that do not alter the CBA do not require agency head review.

8.1.1. DCPAS will return agency head review notification of approval or disapproval to management hand union, and identify specific reasons for disapproval. **(T-0).**

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

8.1.3. In the event certain provisions are disapproved in an otherwise valid contract, the parties may agree to go back and renegotiate disapproved provisions or exclude those provisions from the contract.

8.2. Negotiated Agreements Subject to Agency Head Review.

8.2.1. Master Labor Agreements

8.2.2. CBAs.

8.2.3. Ground Rules.

8.2.4. Memorandums of Understanding.

8.2.5. Memorandums of Agreement.

8.2.6. Local agreements subject to a national or other controlling agreement at a higher organizational level will be reviewed pursuant to the procedures of the controlling agreement. Where no such procedures are contained in the controlling agreement, the local agreement will be reviewed pursuant to the agency head review procedures. **(T-0).**

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

8.3. Agency Head Reviews. Reviews occur:

8.3.1. Upon execution of ground rules.

8.3.2. Upon execution of any new labor agreements.

8.3.3. Upon execution of term or renegotiated contracts.

8.3.4. Upon rollover or “automatic renewal” of agreements.

8.3.5. Upon execution of mediation or impasse language.

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

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

8.4.1. A copy of the agreement;

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

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

8.4.4. Office of Personnel Management Form 913B, *Change Form-Recognition and Agreements*.

8.4.5. Certificate of Representative.

8.5. Ratification. Unions may have a review process in place, similar to the agency head review, known as ratification, known as ratification, though it is not required by Statute. The ratification process must be completed prior to agency head review. **(T-0).**

8.6. Timeliness. Agency head review must be accomplished within 30 days from the date the agreement is executed by the commander and the union president. **(T-0).** If not approved or disapproved by DCPAS within that time, the agreement goes into effect the 31st day after execution (excluding provisions contrary to law or government-wide regulation). Delays in submitting agreements reduce DCPAS's time to provide a thorough review.

8.7. Rollover or Automatic Renewal. Agreements containing a "rollover" or "automatic renewal" clause are subject to agency head review in accordance with 5 USC § 7114(c)(1). Typically, prior to renewal date of the agreement, the contract provides for a 105-60 day open-window period when management or the union may request to reopen the agreement for negotiation. LROs should review contracts prior to rollover or automatic renewal to determine the need for revision or to incorporate memorandum of agreements. LROs are required to further obtain LLFSC legal review of the contract at least 90 days prior to automatic renewal or rollover of CBAs.

Chapter 9

FORMAL DISCUSSIONS

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

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

9.2.1. The following discussions or meetings may constitute formal discussions:

9.2.1.1. A discussion between management and a grievant relating to a grievance is a formal discussion. Presently, the FLRA considers formal EEO complaints as grievances for purposes of formal discussions. However, EEO Commission regulations (29 CFR Part 1614) specifically prohibit any agency personnel from revealing the identity of the complainant without his or her consent. The union must be invited to attend even if the employee is representing himself or herself in the negotiated grievance proceeding and the grievant does not want the union to attend.

9.2.1.2. Discussions with bargaining unit employees about general conditions of employment or personnel policies and practices.

9.2.2. The following discussions or meetings are not considered formal discussions:

9.2.2.1. Normal shop talk.

9.2.2.2. Performance evaluation discussions.

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

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

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

9.2.3.2. Whether any other management representatives attended;

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

9.2.3.4. How long the meeting lasted;

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

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

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

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

9.2.4. The above factors (9.2.3.1 – 9.2.3.8) are considered indicators of a formal discussion. They need not all be present for the FLRA to find a meeting was a formal discussion. The FLRA looks at the totality of the circumstances and not just any single factor in determining if there was a formal discussion.

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

9.2.5.1. If the meeting meets the definition of a formal discussion, management must invite the union to attend. Having a shop steward, who works in the office, at the meeting in his or her role as an employee, does not meet this obligation. Rather, the supervisor must invite the union to the meeting with the union being free to designate whom it wants to act as its representative. (T-0).

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

9.3. Weingarten Rights

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

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

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

9.3.1.3. The employee requests union representation.

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

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

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

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

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

9.3.4. Management, usually the installation labor relations officer, shall annually notify employees of their "Weingarten rights." **(T-0).** Desk drops, notices in the installation paper, etc, can accomplish this. The "Weingarten" rights are not like "Miranda" rights in that management is not obligated to inform employees of their rights each time before questioning them. Refer to the CBA for any requirements for individual notification.

Chapter 10

*OFFICIAL TIME

10.1. Official Time to Perform Representational Functions. Official time must be granted to employees representing a labor organization when engaged in collective bargaining, to include attendance at impasse proceedings (5 USC § 7131(a) *Official Time*). **(T-0)**.

10.1.1. Official time cannot be granted for internal union business, such as soliciting union membership and voting or campaigning for internal union elections (5 USC § 7131(b)). **(T-0)**.

10.1.2. The FLRA can authorize official time for employees representing the union in any phase of proceedings before the FLRA (5 USC § 7131(c)). **(T-0)**.

10.1.3. Official time may be granted for other reasons (non-statutory or "contractual") as dictated by the parties' CBA, or through a past practice. The time granted must be reasonable, necessary, and in the public interest (5 USC § 7131(d)). **(T-0)**. Examples of non-statutory/contractual official time include representational functions associated with grievances and arbitration hearings, preparation for negotiations, and attendance at labor-management committee meetings.

10.1.4. Official time requests are raised to the union official's first-line supervisor or authorizing official. **(T-3)**. In evaluating requests, consideration should be given to its reasonableness, the amount of time requested, past practices of allowing time, the time of day it is to be used, availability of the staff to accomplish the mission, contractual obligations, etc. Supervisors monitor the amount of official time used. If a supervisor fails to ensure proper usage of official time by the union officials, the supervisor may find that a past practice of extensive official time usage/accounting has occurred. When monitoring the use of official time, supervisors are cautioned not to interfere with the protected rights of the union stewards and employees.

10.1.5. In the event the union official's official business cannot be concluded within the time approved for official time, the union official will contact his or her immediate supervisor and request additional time. **(T-3)**. If the immediate supervisor denies the verbal request based on the needs of the mission, the union representative and the supervisor will seek mutual agreement on an alternate time for absence. **(T-3)**.

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

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

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

10.2. Recording Official Time. Office of Personnel Management (OPM) requires federal agencies to record or account for official time for employee representational activities. This requirement is not limited solely to activities specifically required by the Statute. OPM uses this data in reports to Congress and in labor studies. **(T-0)**. Supervisors must ensure that official time is used only for authorized purposes, and that it is not used contrary to law or regulation. **(T-0)**.

Supervisors will ensure employees official time is properly recorded in the automated time and attendance system. Supervisors approve official time in 15-minute increments. **(T-3)**.

10.3. DELETED.

Chapter 11

REQUESTS FOR INFORMATION

11.1. Requests for Information. It is Air Force policy to bargain in good faith and provide union representatives with information reasonably necessary to represent employees in accordance with AFPD 36-1 and the Federal Service Labor-Management Relations Statute. As part of this effort, management has an obligation to furnish information requested, that is reasonably necessary to carry out employee representational duties, to the extent allowed by law.

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

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

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

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

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

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

Chapter 12

UNFAIR LABOR PRACTICES

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

12.1.1. Interfere with, restrain or coerce employees in the exercise of their rights;

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

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

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

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

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

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

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

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

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

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

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

must be followed. Once the labor agreement comes up for renewal, it must be brought into conformance with the current regulations. **(T-0).**

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

Chapter 13

GUIDELINES RELATED TO UNFAIR LABOR PRACTICE CHARGES

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

13.2. ULP filings with the FLRA. Unfair labor practice charges are filed with the FLRA regional office. Regional directors, under the direction and supervision of the General Counsel, investigate the charge to determine if there is sufficient evidence to warrant issuing a complaint. If a complaint is issued, a hearing is set and the parties go before an Administrative Law Judge with the General Counsel prosecuting. The Administrative Law Judge will issue a decision either finding that a ULP was committed or dismissing the complaint. If either party is dissatisfied with the Administrative Law Judge's decision, the case can be appealed to the FLRA.

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

13.4. LLFSC Representatives for ULPs. LLFSC attorneys act as agency representatives for ULPs filed by or on behalf of the Department of the Air Force with the FLRA, subject to the exceptions listed in **paragraph 2.3.7** of this Instruction. Prior to initiating a management ULP, an installation is required to seek approval from the LLFSC. **(T-1)**. Installations' CPO should refer to their FLDCOM or MAJCOM's policies in determining whether FLDCOM or MAJCOM approval is also needed to initiate a management ULP. Any union-initiated ULPs received by the installation are required to be forwarded to the LLFSC for handling**. (T-1)**. LLFSC counsel will be deemed agency representatives for FLRA or Federal Service Impasses Panel litigation, unless otherwise indicated in this Instruction. **(T-2)**.

13.5. Unfair Labor Practice Charges Filed Against Installation Management. After receiving a ULP charge, the installation LRO/CPO furnishes all pertinent information to LLFSC or appropriate AFMC, AFRC, Air National Guard legal office. A representative is then assigned who issues or coordinates on any correspondence concerning the matter. The CPO or LRO provide civilian personnel procedural and technical advice to the designated representative in all phases of the case and attends the ULP hearing as a technical advisor. The designated representative represents Air Force management in all ULP proceedings brought by the FLRA against the US Air Force.

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

13.6.1. Description of the charge.

13.6.2. A summary of the allegations, dates and the management officials or other witnesses involved, with a description of any supporting evidence. The ULP must have occurred within the past 6 months.

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

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

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

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

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

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

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

Chapter 14

NEGOTIATED GRIEVANCES

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

14.2. Exclusivity. The CBA includes procedures for settling grievances. Except as provided by section 7121(d) and (e) of the Statute, the grievance procedure negotiated by the parties will be the exclusive procedure for resolving bargaining unit employee grievances, which fall within its coverage. **(T-0).**

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

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

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

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

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

Chapter 15

ARBITRATION PROCEDURES

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

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

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

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

15.5. Special Reporting Requirements. When a CPO receives an award (adverse or otherwise) involving an action under 5 USC § 4303, *Actions based on unacceptable performance,* or 7512, *Actions covered,* immediately send two copies of the award using AF Form 112*, Arbitration Case Summary* to AFPC Civilian Support Branch (AFPC/DP3FS) and one copy to the LLFSC or appropriate AFMC legal office. The CPO/LRO must send a copy of all arbitration awards to AF/A1CP and AFPC/DP3FS for upload to the OPM CBA database. **(T-1)**.

Chapter 16

EXCEPTIONS TO ARBITRATION AWARDS

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

16.2. Arbitration Exceptions. Installations and AFMC may write and file the exceptions subject to coordination and approval of the LLFSC, AF/1A1CP and DCPAS. The LLFSC may also file exceptions with the coordination and approval of DCPAS. DCPAS can unilaterally withdraw any exceptions filed by the service components or DoD agencies. The FLRA has no jurisdiction to review arbitration awards, which concern adverse actions taken under 5 USC § 7512 or actions based on unacceptable performance covered under 5 USC § 4303. FLDCOMs and MAJCOMs may set additional processing requirements for their installations for all arbitration awards.

Chapter 17

BARGAINING UNIT STATUS (BUS) CODES AND DUES WITHHOLDING

17.1. Bargaining Unit Status (BUS) Codes. The Federal government uses BUS codes to determine the bargaining unit status of employees and provide general accounting and oversight. The BUS codes represent collective bargaining rights, entitlements to national consultation rights, and entitlements to official time for representation under federal law. The Civilian Personnel Section (CPS) will use the BUS code in all personnel actions to properly identify employees in bargaining units and non-bargaining units. **(T-0)**. BUS codes are annotated on the position description entered in Defense Civilian Personnel Data System and identified on Requests for Personnel Actions and Notification of Personnel Actions. **(T-0)**.

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

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

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

17.2. Obtaining a BUS Code. When a new bargaining unit is certified, the LRO submits a request for a BUS code from the AF/A1CM with the Certification of Representative and completed OPM Form 913B. AF/A1CM submits documentation to OPM for a BUS code. When the new BUS code is received from OPM, AF/A1CP advises DCPAS, and the installation LRO or NAF Human Resource Office of new BUS code. The installation will initiate personnel actions to reflect the new BUS code on impacted bargaining unit employees. (T-0).

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

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

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

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

JOHN A. FEDRIGO
Acting Assistant Secretary of the Air Force
(Manpower and Reserve Affairs)

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

AFI 33-322, *Records Management and Information Governance Program*, 23 March 2020

5 CFR Part 2422, *Representation Proceedings*

5 CFR Part1614, *Federal Sector Equal Employment Opportunity*

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

5 USC § 7102, *Employees' Rights*

5 USC § 7103, *Definitions; application*

5 USC § 7106, *Management Rights*

5 USC § 7112, *Determination of appropriate units for labor organization representation*

5 USC § 7113, *National consultation rights*

5 USC § 7114, *Representation rights and duties*

5 USC § 7115, *Allotments to representatives*

5 USC § 7116, *Unfair labor practices*

5 USC § 7117, *Duty to bargain in good faith; compelling need; to consult*

5 USC § 7119, *Negotiation impasses; Federal Service Impasse Panel*

5 USC § 7121, *Grievance procedure*

5 USC § 7122, *Exceptions to arbitral awards*

5 USC § 7131, *Official time*

5 USC Chapter 4303, *Performance Appraisal*

5 USC § 7311, *Loyalty and striking*

5 USC Chapter 7512, *Adverse Actions*

DAFI 33-360, *Publications and Forms Management,* 1 December 2015

Executive Order (EO) 14003 *Protecting the Federal Workforce,* issued 22 January 2021

AFPD 36-1, *Appropriated Funds Civilian Management and Administration*, 18 March 2019

Prescribed Forms

None

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

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

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

SF 1188, *Cancellation of Payroll Deductions of Labor Organization Dues*

Abbreviations and Acronyms

AFI—Air Force Instruction

AFMC—Air Force Material Command

AFLOA—Air Force Legal Operations Agency

AFMAN—Air Force Manual

AFPD—Air Force Policy Directive

AFPOA—Air Force Personnel Operations Agency

AFPC—Air Force Personnel Center

AFRC—Air Force Reserve Command

BUS—Bargaining Unit Status

CBA—Collective Bargaining Agreement

CPO—Civilian Personnel Officer

CPS—Civilian Personnel Section

DAFI—Department of the Air Force

DCPAS—Defense Civilian Personnel Advisory Service

DoD—Department of Defense

DoDI—Department of Defense Instruction

EEO—Equal Employment Opportunity

EO—Executive Order

FLDCOM—Field Command

FLRA—Federal Labor Relations Authority

I&I—Impact and Implementation

HQ—Headquarters

HSB—Human Resource Management Strategic Board

HRO—Human Resources Office

LLFSC—Legal Law Field Support Center

LRO—Labor Relations Officer

MAJCOM—Major Command

NAF—Nonappropriated Fund

NCR—National Consultation Rights

OPM—Office of Personnel Management

OPR—Office of Primary Responsibility

RIF—Reduction-in-force

SJA—Staff Judge Advocates

USAF—United States Air Force

USC—United States Code

ULP—Unfair Labor Practice

USSF—United States Space Force

Terms

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

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

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

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

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

Federal Labor Relations Authority—the Federal Labor Relations Authority, also known as the Authority, is responsible for establishing labor policy and guidance in accordance with the provisions of 5 USC Chapter 71. The Authority prescribes criteria for granting national consultation rights and resolves labor disputes, including those related to ULP complaints.

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

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

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

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

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

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

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

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

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

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

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

Union Time Rate—the total number of duty hours in the fiscal year that employees in a bargaining unit used for taxpayer-funded union time, divided by the number of employees.